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PROPOSALS TO REFORM OUR PRESIDENTIAL  
ELECTORAL SYSTEM:

A Survey of the Historical Background  
and Development of the Electoral College  
and a Compilation of Proposals to Reform  
it with Pro and Con Analyses and a  
Selected Bibliography

CONGRESSIONAL  
RESEARCH SERVICE

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## PROPOSALS TO REFORM OUR ELECTORAL SYSTEM

### Historical Background

#### Present Method of Election

The President of the United States is not elected directly by the people as are Senators and Representatives, but indirectly, by the Electoral College, which is composed of Presidential electors who are elected directly by the people.

Presidential Electors - The Constitution of the United States provides that "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in Congress" (Art. II, sec. 1), and the 23rd Amendment provides for electors from the District of Columbia. All States and the District of Columbia provide for "appointment" of electors through direct election by the people. In 1968, there were 50 States with a total of 100 Senators and 435 Representatives, plus three electors from the District of Columbia; thus the total number of Presidential electors in 1968 was 538.

The Electoral College - Under the Constitution, Congress has the responsibility of setting the date on which electors are chosen and also of setting the date on which such electors shall meet and cast their votes (Art. II, sec. 1). Congress, accordingly,

has set the Tuesday after the first Monday in November in every fourth year as the date for choosing the electors, and the first Monday after the second Wednesday in December next following their election as the date on which such electors shall meet and cast their votes (3 U.S.C. §7).

In practice, in every State except Maine, the political party obtaining a plurality of votes, no matter how small, names the entire slate of electors. This practice, however, is not required by the Constitution, and each State is free to change it at will. Maine, the only State that has changed her procedure, provides that:

The Presidential Electors at large shall cast their ballots for President and Vice-President of the political party which received the largest number of votes in the State. The Presidential Electors of each congressional district shall cast their ballots for President and Vice-President of the political party which received the largest number of votes in each congressional district.

(21 Maine Revised Code Annotated 1184 (1-A), 1969)

The electors thus chosen on the Tuesday after the first Monday in November convene as "colleges" in their own States on the first Monday after the second Wednesday in December and cast their votes for a President and Vice President of the United States. These "colleges" are known collectively as "the Electoral College."

Count of Votes by Congress - After the electors have cast their votes, the results are sent to the President of the Senate. Pursuant to statute (3 U.S.C. §15), the Senate and the House of Representatives meet in joint session on January 6 following the meeting of the electors, and the President of the Senate, in the presence of Congress, opens all the certificates containing the electoral votes. The votes are called out and counted, State by State, and the result is announced. The person who receives a majority of the electoral votes (in 1964, 270 out of 538) is declared to have been elected (Const. Amendment XII; 3 U.S.C. §15). Usually this is merely a formality since the results of the election are almost always known as soon as the last State has finished counting its ballots after the November election.

On January 6, 1970, when both Houses of Congress convened to count the electoral votes from the States an objection by concurrent resolution was raised to the counting of the vote of an elector from North Carolina, one Dr. Lloyd W. Bailey, a Republican elector that cast his vote for President for George C. Wallace and for Vice President for Curtis E. LeMay. Dr. Bailey had justified his action as a "moral obligation" to the people of the 2nd Congressional District of North Carolina, though he was elected on a statewide ballot. The objection, signed by 7 Senators and 38 Representatives provided that:

We object to the votes from the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President on the grounds that they were not regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and Spiro T. Agnew for Vice President and the State thereby appointed thirteen electors to vote for Richard M. Nixon for President and Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice President.

(S. Con. 1, 91st Cong.)

The objection was based largely on the idea that the vote of Dr. Bailey was not "regularly given" as required by Title 3 United States Code Section 15.

Another attack on the vote came in the form of two Constitutional objections. The first regarded the vote as a violation of the voters of North Carolina 14th Amendment equal protection guarantee to a right to an effective vote in that the "faithless elector" diluted the effectiveness of their vote. The second argument of such nature was based on Congress' power to count electoral votes being an absolute power not a legislative one and "the only Constitutional power specifically granted to any body or agent to protect the electoral system against arbitrary or unlawful action to thwart the popular will of the people of the States...."

Additional arguments for not counting the vote were (1) in North Carolina the electors' names do not appear on the ballot, only those of the candidates. Therefore, the voters are entitled to assume that they voted for such candidates and that their will will be carried out; (2) that an agency relationship existed between Dr. Bailey and the voters and that his action was a violation of such relationship and should not be dignified by Congress; (3) that if one elector can so act, so may they all; (4) in the case of North Carolina the action of Dr. Bailey nullified 1/13th of the State's voting power in the Electoral College.

The arguments against supporting the objection to the vote of Dr. Bailey were as follows. (1) The Constitutional provisions of Article II and the 12th Amendment both provide that "The electors shall ... vote by ballot for President and Vice President." This was interpreted to mean that "the electors are constitutionally free and independent in choosing the President and Vice President," and that therefore Congress must count the votes as given. (2) The votes from North Carolina were lawfully certified and otherwise in order and therefore, regular. (3) No law, either North Carolina or Federal, prohibited Dr. Bailey from voting as he wished. (4) The official position of the North Carolina Board of Elections supported the counting of the vote as given; (5) the proper method for resolving such a situation was by Constitutional amendment because none other would serve.

The resolution failed by a vote of 33-58 in the Senate and 170-228 in the House.

Election thrown into House - If no Presidential candidate obtains a majority of the whole number of electoral votes, the election of the President falls into the House of Representatives which shall immediately choose a President, by ballot, from the candidates who received the highest number of votes in the Electoral College, not exceeding three such candidates (Constitution, Amendment XII).

The Constitution provides that in choosing the President the votes in the House shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of the representations from two-thirds of the States, and a majority of all the States shall be necessary to a choice. (Amendment XII).

The procedure for voting for President in the House of Representatives is determined by rules adopted by the House, which are binding only during the Congress in which they are adopted. The last set of rules adopted by the House in this respect was in 1825 (see Hind's Precedents of the House of Representatives, Vol. III, par. 1984).

Each State's representation arrives at its one vote by polling its Members. The candidate receiving the majority of votes of that State's Representatives will receive the one full vote of the State. If the State's votes in its poll are evenly divided, or if no candidate receives a majority in the poll, the State will lose its one vote. In that event the State may either submit a blank ballot or decline to vote. The House can keep taking ballot after ballot until one candidate receives the votes of a majority of the States. Thus, in the election of 1800, which fell into the House of Representatives, Jefferson was chosen on February 17, 1801, on the thirty-sixth ballot. (For a description of what happened in the Electoral College and in the House of Representatives during the Election, see American Historical Association Report (1913), Vol. 2, pp. 132-137.)

If no Vice-Presidential candidate should receive a majority of votes in the Electoral College, then from the two candidates having the highest number of votes, the Senate shall choose a Vice-President. A quorum for that purpose shall consist of two-thirds of the whole number of Senators (67 in 1968), and a majority of the whole number (51 out of 100 in 1968) shall be necessary to a choice (Amendment XII).

If the election should fall into the House of Representatives and if the House should fail to elect a President before

January 20th, then the Vice-President-elect shall act as President until a President shall have qualified, and Congress may by law provide for a situation where neither a President-elect nor Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified (Amendment XX). Congress has, in effect, provided that in the event that both the President-elect and the Vice-President-elect fail to qualify by noon of January 20 of the year following the November election, then the Speaker of the House shall act as President until either the President-elect or Vice-President-elect qualifies (3 U.S.C. 19). The Speaker who would act as President in such circumstances would be the one chosen by the House on January 3.

"Lame Duck" Congress - Until the adoption of the Twentieth Amendment to the Constitution, the electoral votes were counted by the outgoing or "lame duck" Congress, which conceivably could be under the control of the defeated party. With the ratification of the Twentieth Amendment by the thirty-sixth State in 1933 and the enactment of the law setting the date for the counting of the electoral votes by Congress as January 6, it is the newly-elected House of Representatives that would choose the President, since that Amendment provided that the term of the newly-elected Members of Congress should commence on January 3 instead of March 4.

"Appointment" of Electors--State law - Every State now elects its presidential electors at the general election held in November of presidential election years.

The laws of the various States differ, however, as to the method of nomination of these electors, as to the placement of the names of candidates for presidential electors upon the general election ballots, and as to the special instructions issued to such electors concerning their conduct after their election.

Nomination - The methods of nominating presidential electors in the various States fall into three categories:

(a) Conventions - In the following States electors are nominated by State conventions of the political parties: Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

In Louisiana, the manner of nominating electors is within the discretion of the State central committee of the political party but nomination is generally by party State convention called by such committee.

(b) State Committees - In the following States, electors are nominated by the State committee of the political party: Georgia,

New Jersey, New York, South Carolina, and Tennessee. In Florida, the Governor nominates the electors on the recommendation of the State Executive Committee of each political party.

In the District of Columbia, electors are nominated by the executive committee of each political party.

(c) Primary - the law calls for primaries in Arizona. In Alabama, there is no statutory requirement for a primary, the method for nominating presidential electors being left to the party organization. However, in 1964 and 1968, a Democratic primary was held and candidates were chosen therein for presidential electors.

In Alaska, presidential electors are chosen either at a State convention or in any other manner prescribed by the by-laws of the party.

In Kentucky, presidential electors are chosen either at a State convention or by primary, according to party rules. Democrats used the convention method in 1968.

In Mississippi, the State convention may select two groups of electors, one pledged to the party's national candidates and the other unpledged. A subsequent party primary will then determine which group of electors will appear under the party label on the November general election ballot. In the absence of such a primary, the party's electors shall appear on the November ballot as unpledged.

In Pennsylvania, presidential electors are nominated by the presidential nominee of each political party.

Pledge of Electors

(a) Primaries - In the States which nominate electors in primaries, the nomination papers filed by or in behalf of candidates for presidential electors contain wording from which a pledge to vote for the party's presidential candidate may be implied.

In Alabama, in the 1964 Democratic primary several candidates for presidential electors were pledged to the national party presidential candidate, while others ran "Unpledged." The "unpledged" candidates were finally nominated.

In Alaska, the party shall require from each candidate for elector a pledge that as an elector he shall vote for the candidates nominated by the party of which he is a candidate.

In Arizona, the electoral candidate nomination papers contain a statement that such candidate is considered "as representing the principles of said party."

In Oklahoma, where the State convention of a party nominates its electors, a nominee elector subscribes to a statutory oath that if elected he will cast his ballot for his party's candidates for President and Vice President.

(b) Others - In Florida, where the Governor nominates the candidates for presidential electors on the recommendation of the State Executive Committee of each political party, the Governor must nominate only persons who have taken an oath to vote for their Party's

Presidential candidate.

In Oregon, where the State Convention of the political party nominates the candidates for Presidential elector, "each candidate for presidential elector so selected shall sign a pledge that if elected, he will vote in the electoral college for the candidates of his party for President and Vice-President."

In Pennsylvania, where electors are nominated by the Presidential nominee, it seems apparent that such electors must have pledged their loyalty to such Presidential nominee or he would not have selected them.

#### Election

(a) Presidential short ballot - By authorizing the use of the so-called "Presidential short ballot," where the names of the Presidential and Vice-Presidential candidates are printed on the general election ballot in lieu of the names of Presidential electors, 35 States have implied that they expect the presidential electors, if elected, to vote for the Presidential candidate whose name appears on the ballot in their party column. The laws of these States contain a provision to the effect that a vote cast for the candidates for President and Vice-President is deemed to be a vote cast for the electors of that Party which such Presidential and Vice-Presidential candidates represent: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana,

Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York (where voting machines or short ballots are authorized), North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island (in voting machines), Texas, Utah, Washington, West Virginia, Wisconsin, and the District of Columbia.

(b) Ballots containing Presidential Candidates and Electors -

The same inference of a pledge may be made from a ballot which contains the names of a group of Presidential electors, headed by the names of the Presidential and Vice Presidential candidates: Arizona, Idaho, Kansas, Louisiana, New York (in precincts which have no voting machines and do not authorize short ballots), North Dakota, Oklahoma, South Dakota, Tennessee, Vermont, Virginia, and Wyoming.

(c) Ballots containing electors only - In only 2 States does the law provide for the names of unpledged electors on the general election ballot: Alabama and Mississippi (in both cases those who have been chosen in the primary as "Unpledged"). The South Carolina statute gives the respective political parties in the State the discretionary choice to put the names of the presidential and the vice-presidential nominees on the ballot.

Special Instructions to Electors - The laws of several States contain specific instructions to the elected Presidential electors:

(a) Alaska - "The electors shall proceed to cast their votes for the candidates for the office of president and vice-president of the party which selected them as candidates for electors and shall perform the duties of electors as required by the constitution and laws of the United States." (Alas. Stats. sec. 15.30.050).

(b) California - "The electors when convened, if both candidates are alive, shall vote for those persons for President and Vice-President who are the candidates of the political party which they represent, one of whom at least is not an inhabitant of this State." (West's Ann. Cal. Code, Elections, 1961, sec. 25105).

(c) Connecticut - "Each such elector shall cast his ballots for the candidates under whose name he ran on the official election ballot ...." (Gen. Stats., 1967 rev., sec. 9-176).

(d) Colorado - "Each elector of President and Vice President shall be required to vote for the pair of Presidential and Vice Presidential candidates who received the highest number of votes at the preceding general election in Colorado." (Rev. Stats., 1963, sec. 49-20-1(5)).

(e) District of Columbia - "Each person elected as elector of President and Vice President shall, in the presence of the Board (of Elections) take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and

it shall be his duty to vote in such manner in the electoral college." (D. C. Code, 1961, 1966 Supp., sec. 1-1108(g)).

(f) Florida - "... but the names of the actual candidates for President and Vice President for whom the electors will vote if elected, are printed on the ballot ...." (Underscoring added). (Stats. Ann., 1960, sec. 103.021(2)). Failure to so vote may impose liability for a felony.

(g) Hawaii - "The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President ... who are the candidates of the political party which they represent, one of whom at least, is not an inhabitant of this State." (Rev. Laws, 1955, 1965 Supp., sec. 11-221).

(h) Idaho - "Presidential electors ... shall be bound to vote for the party candidates for President and Vice President, respectively, whose names appear at the head of the party ticket." (Code, 1967 Supp., sec. 34-904).

(i) Maine requires that the presidential electors at large cast their ballots for the candidates of the party which received the largest number of votes in the State and that the electors of each Congressional district cast their ballot for the candidates of the political party which received the largest number of votes in their district.

(j) Maryland - "[They] shall cast their votes for the candidates who have received a plurality of the votes cast in the State of Maryland." (Ann. Code, 1967, Art. 33, sec. 20-2, 20-4).

(k) Massachusetts - Candidates for electors are nominated to vote for their party's candidates for President and Vice President (General Laws (1958), Ch. 54, §§78, 148).

(l) Nevada - "The presidential electors shall vote only for the nominees for President and Vice President of the party that prevailed in this State in the preceding general election." (Revised Stats., 1965, Title 24, sec. 298.050).

(m) New Mexico - "A. All presidential electors must cast their ballots in the electoral college for the candidates of the party which said electors represent.

"B. Any presidential elector who casts his ballot in violation of the provisions contained in subsection A herein, shall be deemed to be guilty of a misdemeanor." (Stats., Ann., 1967 Supp., sec. 3-10-1.1).

(n) New York - Lists of nominations published shall not contain the names of presidential electors but such candidates shall be described as a specified number of presidential electors "nominated to support the party candidates, naming them, for the office of President and Vice-President." (McKinney's Consol. Law, Elections, sec. 81).

(o) North Carolina - Provides that any presidential elector who fails to attend and vote for the Candidate of the political party which nominated such elector, for President and Vice-President of the United States at the time and place directed shall forfeit and pay to the State \$500.00. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall fill such vacancy.

(p) Ohio - Provides that a presidential elector when discharging the duties enjoined upon him by the constitution or laws of the United States, shall cast his electoral vote for the nominees for President and Vice-President of the political party which certified him to the Secretary of State as a presidential elector.

(q) Oklahoma - "Any person elected as Presidential elector ... after taking and filing the oath or affirmation prescribed ... who violates said oath or affirmation by either failing to cast his ballot ..." for his party's candidates for President and Vice President, "or by casting his ballot for any other person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine

of not more than \$1,000." (Stats., Ann., Title 26, 1967 Supp., sec. 521).

(r) Oregon - "Each candidate for presidential elector so selected shall sign a pledge, that if elected, he will vote in the electoral college for the candidates of his party for President and Vice President." (Oregon Rev. Stat. 248.355)

(s) Tennessee - "... the words at the head of the group of electors ... reveal the name of the candidates for president and vice-president ... whom such group of electors is pledged to support." (Code Ann., 1955, sec. 2-403).

(t) Virginia - "The electors selected by the State conventions ... shall be expected to vote in the electoral college for the nominees of any national convention to which the said State convention elects delegates unless said candidates for electors shall be instructed by a State convention at least 60 days before the general election in November that they are expected to vote for other persons; in which event any person or persons duly authorized so to do as a national representative of the party holding such national convention may certify to the State Board of Elections under the same terms and with the name of the political party and the names of the candidates for President and Vice President for whom they are expected to vote in the electoral college." (Code, 1964, sec. 24-290.6).

Development of Electoral System

In creating the electoral college system, the authors of the Constitution intended that each State should choose its most distinguished citizens as electors. Once the electors had been selected, by whatever means the State legislature desired, it was expected that they would deliberate and vote as individuals in choosing the President.

With the emergence of strong political parties, it early developed that electors were chosen to represent the parties. Designation as a candidate for elector by the party leadership was given as an honor to those who had served the party well. From 1800, independent voting by electors almost disappeared. In the few cases where electors have not voted for their party's nominee, they have normally given advance warning to the voters -- as did the Bull Moose Republicans in South Dakota in 1912 and the States' Rights Democrats in certain Southern States in 1948.

In response to pressure in favor of popular control, the practice quickly developed in the several States of choosing electors by popular vote. Until 1800, most State legislatures retained the function for themselves, but by 1804 the majority had provided for direct popular election. By 1832, direct election was the rule in all States except South Carolina, which made the change at the time of the Civil War. (In the newly admitted State of Colorado in 1868

and the reconstructed State of Florida in 1876, electors were appointed by the legislature). Subject to certain Constitutional limits, the States retain the right to say who is authorized to vote in these direct elections.

The practice of giving all the electors to the party which wins the most votes in the States -- i.e., the "general ticket" system -- is also a product of the early 1800's. At first, most "popular election" States provided that electors should be chosen in districts similar to Congressional districts. Under this system, different districts were able to return electors representing different parties. Dominant parties in State legislatures soon realized, however, that they could furnish more electoral votes for their candidate -- and prevent minority parties from getting any votes -- if the party with the most votes in the State won all the electors.

By 1804, 7 out of 10 "popular election" States were using the general ticket; by 1824, 13 out of 18. Since 1836, there have been few exceptions to the general ticket rule. See appointment by legislatures, above. In 1892, the Michigan electors were selected under the district system.

#### The Movement for Reform

From the start, the method of electing the President has been a subject of debate and discussion. At the Constitutional Convention, a few key members, including Madison, Franklin and Gouverneur

Morris, favored direct popular election. Others would have preferred to see the President elected by Congress or by State Governors. One of the main arguments for the electoral college system was that through the provisions for at least three electors regardless of population, it gave the small States some protection against domination by large States. It was felt that if we were to preserve our Federal system of Government, this was an important consideration and this argument may have gone far in swaying the Convention. Another important argument was that it placed the choice of the President in the hands of persons presumably able, as the mass of the people at that time were not, to become acquainted personally with the various Presidential candidates.

Since January 6, 1797, when Rep. William L. Smith of South Carolina offered in Congress the first Constitutional Amendment proposing reform of our procedure for electing a President, hardly a session of Congress has passed without the introduction of one or more resolutions of this character. In the 57-year period between 1889 and 1946, 109 Amendments were proposed; in the period from 1947 to 1966, 179 Amendments were introduced, and in the period 1967-1969, 195 Amendments were introduced. It is claimed that more Amendments have been proposed concerning the Presidential election than concerning any other single provision of the Constitution.

#### "Minority" Presidents

The term "minority" President has been loosely used, sometimes creating an erroneous impression.

Actually, we have had only three minority Presidents; that is, a candidate who was elected President having received a smaller number of popular votes than his closest opponent.

In 1824, although Andrew Jackson received more electoral votes and more popular votes than did John Quincy Adams, the election fell into the House of Representatives, which gave a majority of its votes to Adams, and Adams was elected President.

In 1876, although Samuel J. Tilden received a majority of more than 250,000 popular votes over Rutherford B. Hayes, the returns from Florida, Louisiana, Oregon, and South Carolina were contested. An electoral commission created by Congress to settle the dispute decided the contested returns in favor of Hayes, and Hayes won the election by one electoral vote.

In 1888, although Grover Cleveland received a popular plurality of about 100,000 votes over Benjamin Harrison, he obtained only 168 electoral votes, and Harrison with 233 electoral votes, was elected President.

We elected eleven other Presidents who failed to obtain a majority of the popular vote; but all these men did receive a plurality. Following is a table showing the percentage of the popular vote which each received:

	<u>Elected</u>	<u>Opponents</u>		
1844	Polk 49.56	:	Clay 48.13	Birney 2.3
1848	Taylor 47.13	:	Cass 42.47	Van Buren 10.13
				Smith .09

1856	<u>Buchanan</u> 45.63	:	<u>Fremont</u> 33.27	<u>Fillmore</u> 21.08	<u>Smith</u> .01
1860	<u>Lincoln</u> 39.79	:	<u>Douglas</u> 29.40	<u>Breckenridge</u> 19.2	<u>Bell</u> 12.6
1880	<u>Garfield</u> 48.32	:	<u>Hancock</u> 48.21	<u>Weaver</u> 3.35	<u>Dow</u> .11 <u>Phelps</u> .01
1884	<u>Cleveland</u> 48.5	:	<u>Blaine</u> 48.26	<u>Butler</u> 1.74	<u>St. John</u> 1.5
1892	<u>Cleveland</u> 46.04	:	<u>Harrison</u> 43.01	<u>Weaver</u> 8.53	<u>Bidwell</u> 2.25 <u>Wing</u> .18
1912	<u>Wilson</u> 41.85	:	<u>T. Roosevelt</u> 27.42	<u>Taft</u> 23.15	<u>Debbs</u> 5.99 <u>Chafin</u> 1.39 <u>Reimer</u> .19
1916	<u>Wilson</u> 49.26	:	<u>Hughes</u> 46.12	<u>Benson</u> 3.16	<u>Hanly</u> 1.19 <u>T. Roosevelt</u> .19 <u>Reimer</u> .08
1948	<u>Truman</u> 49.51	:	<u>Dewey</u> 45.13	<u>Thurmond</u> 2.4	<u>Wallace</u> 2.38 <u>Thomas</u> .29 <u>Others</u> .29
1960*	<u>Kennedy</u> 49.71	:	<u>Nixon</u> 49.55	<u>Unpledged</u> .92	<u>Others</u> .27
1968	<u>Nixon</u> 43.42	:	<u>Humphrey</u> 42.72	<u>Wallace</u> 13.53	<u>Others</u>

Arguments in Favor of Retaining Present System

Those who favor retaining our present electoral system advance the following arguments:

1. The existing system which became effective in March of 1789 (see Owings v. Speed, 5 Wheat. 420, 422-423 (1820)), has, with minor amendments, successfully withstood the test of almost

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\* 1960 and 1968 figures from Congress and the Nation, vol. II, 1965-68, p. 425. 1960 percentages total more than 100 because of double-counted Alabama votes (both under Kennedy and Unpledged columns).

two centuries.

2. The electoral college method has produced only three "minority" Presidents, that is, candidates who were elected as President even though they received less popular votes than their principal opponents (Adams in 1824, Hayes in 1876, and Harrison in 1888). In only one of these cases (1876) did the winner's chief competitor receive an absolute majority of the popular vote. In the other two cases, they argue, since the winner's principal opponent received only a plurality rather than a majority of the popular vote, it cannot be stated categorically that he had more popular support than the winner; for, if a run-off election had been held between the two, all other candidates excluded, the distribution of the third or other minority party votes in the run-off election might have defeated the candidates who had received the plurality of popular votes.

3. By weighting the composition of the electoral college to give adequate representation to the small and sparsely settled States, the authors of the Constitution helped to reconcile these States to the idea of federation. It cannot be doubted, proponents of the present system claim, that at various times during the history of our nation, this concession has substantially contributed to the stability of our Government; and, even if this provision is not now considered as essential to the survival of our federal union,

it must still be a contributing factor to the feeling of equality which smaller states have with regard to the large industrial states in our Union. Moreover, the fact that under the present system these smaller states have this direct representation and vote in the electoral college results in their obtaining a significant voice in selecting the parties' candidates for President because the political parties recognize that in a close election their electoral vote may be crucial.

4. On only two occasions since 1789 has the election of the President fallen into the House of Representatives (in 1800 and again in 1824), and it was only in one of these instances that the election by the House resulted in the selection of a "minority" President. That was in 1825 when John Quincy Adams was elected although he received fewer popular votes than Andrew Jackson.

5. The existing system reconciles the concept of the separation of powers, particularly in respect to independent and different electoral bases for the President and the Congress, the "counterbalance" theory.

6. Our country has not been troubled by the problem of "splinter" parties, a situation which has plagued many European countries and which might plague us if the electoral college system were altered. The existing system with its requirement of an absolute majority of electoral votes and the general state-unit system

which tends to produce the necessary electoral vote majority for one or other of the major parties, operates to freeze out serious third parties.

7. The existing system's exaggeration of the winner's electoral vote helps assure stability, it is argued, in giving the appearance of nationwide backing in a particularly close and hard-fought campaign. It may help the newly elected President to win general acceptance.

8. A time-proven system for choosing the President should not be lightly discarded, particularly when there is so much uncertainty as to what is a better method, as is demonstrated by the sharp differences of opinion as to what method to change to, among those who desire a change, and when there are doubts as to what the effects of a change would be on the campaigns for the nominations and election under any of the methods proposed. <sup>1/</sup>

#### Arguments Against Present System

Numerous criticisms have been directed at the existing system. Custom and tradition have greatly altered the operation of the system as it was originally created. Some of the criticisms are

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1/ See, "Presidential Election Methods and Urban-Ethnic Interests," Allan P. Sindler, 27 Law and Contemporary Problems 213, Spring 1962; "Electoral College Reform," Report of Law Reform Committee, New York Chamber of Commerce, Nov. 25, 1963; "Rooting For The Electoral College," A.J. Rosenthal, New Leader, Oct. 21, 1968, pp. 14-18, "Direct Elections: An Invitation To National Chaos," Theodore H. White, Life, Jan. 30, 1970, "Is Electoral Reform The Answer," Alexander M. Bickel, Commentary, Dec. 1968; "A Bad Idea Whose Time Has Come," Irving Kristol and Paul Weaver, New York Times Magazine, Nov. 23, 1969, p. 43.

directed at the original system, others at aspects of its development. Many of the specific criticisms will be discussed in the form of arguments which have been advanced in favor of some other method of electing a President and will be found under the discussion of these proposals.

The three major areas of criticism have involved:

(1) The office of presidential elector including its "independent" nature and the authority of the States at any time to change the method of "appointing" or selecting the electors (i.e., to manipulate the system from election to election). 2/

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2/ The question of the "independence" of electors and the power of the States to bind them has been before the courts on several occasions. In Nebraska it was determined that Republican electors ipso facto vacated their position when they refused to support the Republican nominee (State v. Wait, 92 Neb. 313, 138 N.W. 159 (1912)). Persons running for elector who were not pledged to support a political party's nominee were refused inclusion on a Utah primary ballot (Markham v. Bennion, 122 Utah 562, 252 P. 2d 539 (1953)). A lower New York court indicated, in dictum, that an elector could be compelled by mandamus to vote in accordance with his pledge (Thomas v. Cohen, 146 Misc. 836, 262 N.Y. Supp. 320 (1933)). Courts in Alabama and Ohio have indicated to the contrary (Opinion of the Justices, No. 87, 250 Ala. 399, 34 So. 2d 598 (1948); State v. Hummel, 150 Ohio State 127, 80 N.E. 2d 899 (1948)). The United States Supreme Court, in Ray v. Blair, 343 U.S. 213 (1951), indicated that Alabama could require a pledge of a candidate for elector at a primary but left unanswered the question whether such pledges would be enforceable if violated. Note statutory attempts to bind electors, pp. 10 to 14. These statutes, however, have not been generally tested in the courts.

A three-judge federal district court in Mississippi has sustained that State's authority to provide statutorily for unpledged electors on the ballot (Gray v. Mississippi, (D.C. Miss.) 233 F. Supp. 139 (1964)). See also, "State Power to Bind Presidential Electors," 65 Columbia Law Review 696 (April 1965).

(2) The so-called unit-rule or general-ticket method which credits a State's entire electoral vote to the candidate receiving the most popular votes. This is somewhat the obverse of the first major criticism. Objections of this nature are premised on the argument that under the unit-rule great numbers of voters are disfranchised whose votes, are in fact, cast in favor of the opposing candidate. It is possible for a State's entire electoral vote to be cast for a candidate who receives a plurality of only one vote in that State.

Contention is also made that the present system places exaggerated importance on the large and pivotal States, with the great blocs of unit-rule votes, to the extent that the major parties not only concentrate their campaigning in such States but also usually select their presidential candidates from these few most populous areas. It inflates the bargaining power of minorities and pressure groups in the large States where the popular vote may be closely divided, and at the same time discourages heavy voter participation in "safe" or "one-party" States. A correlative argument is that the unit-rule system invites fraud in the large, crucial States where the vote is expected to be close and where the effects of fraud are consequently magnified.

(3) The method of selecting a President when no candidate receives a majority of electoral votes. Under the existing

system the election is placed in the House of Representatives where a choice must be made among the three candidates with the greatest number of electoral votes, such choice to be decided by a majority of the States (26) in the House. Criticism in this regard is directed at the possibility that a candidate not preferred by a vast number of Americans could be elected President. A correlative criticism is that such a system invites political manipulation.<sup>3/</sup>

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3/ On the defects of the present system see: Corwin, Edward S., The President: Office and Powers. History and analysis of practice and opinion. 4th ed., revised, New York, New York University Press, 1957, p. 39f; Lea, Clarence F., Modernize our Presidential Election. Ten statements inserted in the Record by Rep. Lea, June 30-July 25, 1947. Congressional Record, July 8, 1947; A3412-3; U.S. Congress, House of Representatives. Committee on the Judiciary, H. Rept. 1011, 81st Cong., 1st Sess.; Congress. Senate. Committee on the Judiciary, S. Rept. 602, 81st Cong., 1st Sess.; Lucey, Charles, Electoral College System Thwarts Will of American Voters, Congressional Record [daily] V. 102, Feb. 1, 1956; A1012-1014; Wilmerding, Lucius, The Electoral College, New Brunswick, N.J., Rutgers University Press, 1958, especially pp. 71-94, and see Senate Subcommittee on Constitutional Amendments, Hearings, 87th Cong., 1st Sess., "Nomination and Election of President and Vice-President and Qualifications for Voting"; 88th Cong., 1st Sess., "Nomination and Election of President and Vice President", Committee Print, Senate Subcommittee on Constitutional Amendments, 87th Cong., 1st Sess., "The Electoral College", October 10, 1961; Kefauver, Estes, "The Electoral College: Old Reforms Take on a New Look", 27 Law and Contemporary Problems, 188 (Spring 1962); "Electoral College Reform", Chamber of Commerce of the United States, Sept. 1963; Peirce, Neal, "The People's President", 1968, pp. 114-134; American Enterprise Institute, March, 1966, "Legislative Analysis: Proposals for Revision of the Electoral College System."

Proposals to Reform Present System\*

The proposed Amendments to the Constitution of the United States which would provide new methods for the election of the President fall into four general classes: (1) direct election plans, (2) district plans, (3) proportional plans, and (4) the automatic electoral vote or "non-elector" plans.

Involved also are proposals to change the existing system of voting by States in the House of Representatives should the Presidential election be thrown into that body.

The direct election plan would abolish the electoral vote altogether and would provide for the election of the President and the Vice President by a majority of the total popular vote in the United States. In the event no candidate receives a majority a run-off election would be held between the two persons who received the greatest number of popular votes for the Presidency, or in some

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\* See American Enterprise Association, Inc. Analysis of proposals for revision of the electoral college system. Washington, 1966; Electoral Reform. Congressional Quarterly Almanac, 1956, pp. 448-451; Congress and the Nation, 1945-1964, Congressional Quarterly, 1965, pp. 1519-1524; Senate Judiciary Committee, 87th Congress, 1961, Committee Print, op. cit.; Congressional Digest, November, 1967, "Proposals to Change the Method of Electing the President, Pro and Con"; The Association of the Bar of the City of New York, Report of the Committee on Federal Legislation, December 15, 1961, "A Report on the Method of Electing the President and Vice President." See also, Hearings by the Subcommittee on Constitutional Amendments, Senate Committee on the Judiciary, 89th and 90th Congresses, shortly to be available in print.

proposals a contingent election would be held by a joint session of the Senate and the House of Representatives and voting would be per capita. The proposal would eliminate electors, the electoral college vote and the unit-rule, and as one alternative, the throwing of the election into Congress. Some versions would provide for a nationwide primary for Presidential and Vice Presidential candidates.

The district plan, formerly known as the Mundt-Coudert Plan, would preserve the Electoral College but would eliminate the present procedure of giving a State's entire electoral vote to one candidate. Electors would be chosen by the voters, one for each district in every State, and in addition, two for each State at large. The State districts would be compact and contiguous and would generally contain the same number of persons as equi-populated congressional districts within the State. Before being elected the electors would be required to pledge to support their party's candidates, which pledge would be binding. These electors would vote and the candidate who received the highest number of such electoral votes would be President providing he had a majority. Failing a majority, the Senate and the House, meeting jointly, would elect a President from the top three candidates.

The proportional plan, formerly referred to as the Lodge-Gossett Plan, would abolish the Electoral College, but would retain the electoral vote. The electoral vote in each State would be

apportioned among the Presidential candidates in accordance with the number of popular votes they receive, so that the candidate who receives a plurality of the popular votes will not receive the State's entire electoral vote as he would under the present system. In case of a tie between two candidates, various proposals contain different solutions (see page 104, post). Generally, receipt of 40 percent of the electoral votes would be required for election to the Presidency. Failing receipt by a candidate of 40 percent, the Senate and House, meeting jointly, would elect a President from the top two candidates.

The "automatic" electoral vote plan, would abolish the office of elector but retain the electoral votes of each State. Under the plan the electoral vote of each State would be automatically awarded to the candidate receiving the greatest number of votes for President in that State. The candidate receiving a majority of electoral votes, country-wide, would be elected President. If no candidate received a majority, the Senate and the House, meeting jointly, would elect a President from the three top candidates.

Detailed Study of the Various Proposed PlansDirect Election Plan

As has been stated above, the direct election plan would abolish the electoral vote entirely and would provide for election of the President, in the early Resolutions by a plurality, later by a majority, or by a plurality, or by at least 40 percent, of the total popular vote in the country.

This plan was first introduced by Rep. William McManus of New York in 1826. Between 1826 and 1946 there were about seventy-five similar proposals. Since 1947 the following such proposals have been introduced:

80th Congress (1947-1948) - S. J. Res. 91, Sen. Lodge; S. J. Res. 106, Senators Langer and Taylor; H.J. Res. 87, Rep. Lemke.

81st Congress (1949-1950) - S. J. Res. 10, Sen. Langer; and H. J. Res. 118, Rep. Lemke.

82nd Congress (1951-1952) - S. J. Res. 33, Sen. Langer; and H. J. Res. 205, Rep. Burdick.

83rd Congress (1953) - S. J. Res. 44, Sen. Humphrey; and S. J. Res. 84, Sen. Langer.

84th Congress (1955-1956) - S. J. Res. 10, Sen. Langer; S. J. Res. 53, Sen. Humphrey; and H. J. Res. 279, Rep. Hyde.

85th Congress (1957-1958) - H. J. Res. 237, Rep. Udall.

86th Congress (1959-1960) - H. J. Res. 116, Rep. Matthews; H. J. Res. 123, Rep. Udall; H. J. Res. 614, Rep. Staggers.

87th Congress (1961-1962) - S. J. Res. 1, Sen. Smith of Maine and others; S. J. Res. 23, Senators Mansfield and Keating; H. J. Res. 23, Rep. Baldwin; H. J. Res. 28, Rep. Broomfield; H. J. Res. 36, Rep. Collier; H. J. Res. 55, Rep. Matthews; H. J. Res. 76, Rep. Udall; H. J. Res. 84, Rep. Zablocki; H. J. Res. 126, Rep. Merrow; H. J. Res. 128, Rep. Monagan; H. J. Res. 369, Rep. Farbstein; H. J. Res. 486, Rep. Jarman.

88th Congress (1963-1964) - S. J. Res. 1, Sen. Smith of Maine; S. J. Res. 73, Sen. Keating; H. J. Res. 74, Rep. Baldwin; H. J. Res. 94, Rep. Jarman.

Action. All of these resolutions were referred to the appropriate committees. In 1950 when the Senate approved the proportional system, Senator Langer of North Dakota offered as a substitute direct popular election along with national nominating primaries. The Langer substitute was rejected by a vote of 60 to 31, (96 Cong. Record 1276, Feb. 1, 1950). Senator Humphrey of Minnesota then offered as a substitute an amendment which provided only for election by direct national vote and it was defeated by a vote of 63 to 28, (96 Cong. Record 1277, Feb. 1, 1950). In 1956, when the Senate considered the proportional district system compromise, Senator Langer again offered an amendment for nomination and election by national popular vote. This was defeated by a vote of 69

to 13, (102 Cong. Record 5637, March 27, 1956). Senator Lehman of New York then offered an amendment providing only for election by national popular vote, which was rejected by a vote of 66 to 17, (102 Cong. Record 5657, March 27, 1956).

The Senate Subcommittee on Constitutional Amendments held hearings in 1961 and 1963, on joint resolutions proposing constitutional amendments to provide for popular election of the President and Vice President and on other proposals to change the electoral college. Nothing was further done as respects the proposals for popular elections.

89th Congress

S. J. Res. 4, Senators Smith of Maine and Aiken; S. J. Res. 163, Senators Bayh, Bible, Byrd of West Virginia, Clark, Douglas, Magnuson, Muskie, and Nelson; S. J. Res. 143, Senator Burdick; H. J. Res. 30, Rep. Baldwin; H. J. Res. 483, Rep. Jarman.

Action. On February 28, March 1, 2, 7-10, 1968, the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary held hearings on the Senate joint resolutions and other proposed changes in the electoral system introduced in the 89th Congress. No bill was reported from the Committee.

90th Congress

Direct Election - S. J. Res. 2, Senators Bayh, Bible, Byrd of West Virginia, Church, Clark, Hartke, Hatfield, Javits, Lausche, Long of Missouri, Magnuson, Miller, Morse, Nelson, Proxmire, Randolph, Tydings, Yarborough, and Young of Ohio -

The proposal would amend the Constitution to provide for direct popular election of the President and Vice-President.

It would provide that Congress would set a date for the popular election of the President and Vice-President in each State and the District of Columbia. The places and manner of holding such election would be prescribed in each State by its legislature, but Congress could at any time, by law, make or alter such regulations. Congress would prescribe the qualifications of voters and the place and manner of holding such an election in the District of Columbia.

Voters in each State would have the qualifications requisite for voting therein for Members of Congress, but nothing would prohibit a State from adopting a less restrictive residency requirement for voting for the President and Vice-President than for Members of Congress, or prohibit Congress from adopting uniform residence and age requirements for voting in such election.

Voters would cast a single ballot for President and Vice-President, and the candidates shall have consented to the joining of their names on the ballot.

Results of the balloting in each State and the District would be certified to the President of the Senate within 45 days after the election or at such time as the Congress may direct.

The votes would be totaled in January at a joint session of Congress, and those persons joined as candidates for President and Vice-President who received a plurality of at least 40 percent of the total popular vote would be declared elected President and Vice-President.

Should no pair of candidates receive at least 40 percent of the popular vote, then a runoff election shall be held between the two pairs of candidates who received the highest number of votes but less than 40 percent. Congress shall provide by law for such runoff election.

If, at the time fixed for the counting of the totals in Congress, the Presidential candidate who would have been entitled to

the Presidency, shall have died, then his paired Vice-Presidential candidate who would have been entitled to election as Vice President, shall be declared elected President.

Congress would be granted authority to enforce the amendment by appropriate legislation.

H. J. Res. 934, Rep. Van Deerlin, and H. J. Res. 1130, Representative MacGregor, are similar to S. J. Res. 2.

S. J. Res. 6, Senators Smith, Aiken and Morse.

This proposal provided for a national primary for presidential and vice-presidential candidates of each party which has registered as members thereof more than 5 percent of the total registered voters in the United States. In order to get on the primary ballots for such parties in each State, candidates would be required to file petitions with the United States Secretary of State signed by at least 1 but not more than 2 percent of the total popular vote cast for all candidates for President in the last preceding presidential election. Write-ins would also be permitted.

The persons receiving a majority of the votes in such primary for President and Vice President by the voters of their party would be the party nominees for the November election. In the event no candidate for either of the nominations received a majority in the primary, a runoff would be held between the two persons who secured the highest number of votes for the position. The person

receiving a majority of votes in such a runoff primary would be the party's candidate for the position in November.

The amendment would also provide that in the event of the death or resignation of a party's candidate for President, the person nominated for Vice-President would become the candidate for the Presidency. In the event of the resignation or death of a party's candidates for President and Vice-President, or of the candidate for Vice-President alone, provision is made for the selection of such candidates by the national committee of the party.

The electoral college system would be abolished and a popular election would be held in November between the candidates of the qualifying parties, with write-in votes permitted. Each State's popular vote for each of the candidates would be sent to the U. S. Secretary of State who would open and count them, and the persons receiving a majority of the total popular vote for President and Vice-President would be elected. In the event no candidate for either office received a majority, a runoff would be held between the two persons receiving the greatest number of votes for the position, on the 28th day following the general election. A majority in the runoff would be necessary for election.

Congress would be authorized to legislate in respect to possible ties in either the primary or general election, as well as to provide against any dispute or controversy that might arise in the

counting and canvassing of the votes in either the primary or general elections.

The proposal provides that voters in each State in the primary and general elections for presidential candidates shall have the same qualifications requisite for electors for the most numerous branch of the State legislature, but it also authorizes Congress to alter any State regulations on the place and manner of holding such primary and general elections.

S. J. Res. 15, Senator Burdick -

Provides for direct election by popular vote for the President and Vice President. Congress, by law, is to determine the manner of selecting the candidates for President and Vice President, and the names of such candidates shall be placed on the ballot in each State and the District of Columbia in such manner that a single vote may be cast by each voter for the candidates for President and Vice President of each party. Voter qualifications shall be determined by the States, and voters in each State in such election shall have the qualifications requisite for persons voting for members of the most numerous branch of the legislature of that State, except that in each State and the District of Columbia, no person who has not reached age 18 on or before the date of the election shall be permitted to vote for President and Vice President. The places and manner of holding such election shall be prescribed in each State by the legislature thereof, but Congress may alter such regulations, and Congress shall also prescribe voting requirements and the places and manner of holding such an election in the District of Columbia.

Within 45 days after such election, certified lists of votes cast in each State and in the District of Columbia shall be sent, respectively, by the official custodians of election returns thereof, to the President of the Senate.

On January 6, following the election, unless Congress appoints a different day not earlier than January 4 and not later than January 10, the President of the Senate shall, in the presence of the Senate and House, open the certificates and the votes shall then be counted. The candidates for President and Vice President having the greatest number of votes, amounting to at least 40 percent of the total popular votes cast, shall be President and Vice President, respectively. Failing receipt of such percentage, a runoff election, as provided by Congress by law, shall be held between the two pairs of persons joined as candidates for President and Vice President, respectively, who received the highest number of votes cast.

If the Presidential candidate who would have been entitled to election dies before the time fixed for counting the vote totals, the Vice Presidential candidate shall become President.

The 1st, 2nd, 3rd, and 4th paragraphs of section 1, Article II of the Constitution, Amendment 12, and section 4 of Amendment 20, would be repealed.

S. J. Res. 179, Senators Mansfield, Aiken, Byrd of West Virginia, Pearson, Proxmire, and Tydings -

Provides for a national primary for the nomination of party candidates for President, for the selection of Vice Presidential candidates by such parties in a manner to be determined by each party, and for direct popular election of the President and Vice President.

Party nominees for President shall be nominated in a primary held in each State and in the district of Columbia on the first Tuesday after the first Monday in August (unless Congress appoints a different day) in Presidential election years. Voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and in the District of Columbia as established by Congress, and in any case each voter shall be eligible to vote only in the primary of the party of his registered affiliation.

Candidates shall run in the primary of the party of their registered affiliation and must file a petition with the President of the Senate which is signed on or after January 1 of the presidential primary year by a number of qualified voters, in each of at least seventeen States, equal in number to at least 1 percent of the vote cast for electors for presidential and vice presidential candidates of the applicant's party in said States in the most recent previous presidential election. If electors for the candidates of a political party shall have appeared on the ballot in less than 17 States in the

most recent previous presidential election, a petition of a primary candidate of such a party must be signed by a number of qualified voters, in any or all of the several States, equal in number to at least 1 percent of the total number of votes cast throughout the United States for all electors for candidates for President and Vice President in the most recent previous presidential election.

All petitions shall be filed with the President of the Senate not later than the first Tuesday after the first Monday in April of the presidential primary year.

Political parties for the purposes of participating in the primary shall be those whose electors for candidates for President and Vice President received in any or all of the several States an aggregate number of votes equal in number to at least 10 percent of the total number of votes cast throughout the United States for all electors for candidates for President and Vice President in the most recent previous presidential election.

Within 15 days after the primary each State chief executive shall make lists of the persons in each party for whom votes were cast and the number of votes for each, and shall transmit such lists to the President of the Senate, who, in the presence of the Speaker of the House and the majority and minority leaders of both Houses shall count the votes and have published the total votes for each candidate cast by the voters of his party. A majority of the votes

of a candidate's party is required for the nomination, and in the event no candidate receives a majority of the votes of his party, a runoff election shall be conducted between the two highest candidates of the party on the 28th day after the primary. The results of a runoff primary shall be sent by the chief executive of each State, within 15 days after the runoff, to the President of the Senate and the votes shall be counted in the same manner as for the initial primary. A majority vote is required in the runoff primary.

Parties nominating their candidates for President through the nation-wide primary method shall choose their candidates for Vice President in accordance with party practices.

In the event a party candidate for President dies, resigns or becomes disqualified, the party nominee for Vice President shall replace him. Should death, resignation, or disqualification occur to a party's candidates for President and for Vice President, the national committee of said party shall nominate the successor candidates, and in so choosing said successors, the vote shall be taken in the committee by States, the delegation from each State having one vote.

Congress may by law provide for cases where ties occur or disputes arise in the counting and canvassing of the primary and runoff votes.

The places and manner for holding the primary and runoff shall be prescribed in each State by the legislature thereof, but

the Congress may make or alter such regulations. Congress shall legislate for the primary and runoff in the District of Columbia.

Election of the President and Vice President shall be by popular vote with each voter casting a single ballot for two persons who shall have been nominated as official candidates as provided herein. The legislature of each State shall prescribe the place and manner of holding the election but Congress may make or alter such regulations.

Voters in each State shall have the qualifications requisite for persons voting therein for Members of Congress, but States may adopt less restrictive residence requirements for voting for President and Vice President, or Congress may adopt uniform residence and age requirements for voting in such election. Congress shall legislate for voting in the District of Columbia.

Within 45 days after the election, results of the votes in each State and the District of Columbia shall be sent to the President of the Senate. On January 6, unless Congress shall by law appoint a different day not earlier than January 4, nor later than January 10, the President of the Senate, in the presence of the Senate and the House, shall open the votes and the votes shall be counted. 40 percent of the total number of votes certified shall be necessary for election as President and Vice President. If none of the pairs of persons joined as candidates for President and Vice President receives

at least 40 percent of the total, certified votes, then Congress shall provide by law for a runoff election between the two pairs of candidates who received the highest number of votes certified. If the presidential candidate who would have been entitled to election dies before the time fixed for counting the vote totals, the Vice Presidential candidate shall become President.

Congress may provide for the case of the death of both the persons who, except for their death, would have been entitled to become President and Vice President.

Congress shall have power to enforce the article by appropriate legislation.

H. J. Res. 447, Rep. Bennett -

Provides for direct election of a "presidential candidacy" (defined as a candidate for President and a candidate for Vice President who have consented to have their names appear together on a ballot jointly in the States and the District of Columbia for which only one vote need be cast). If a presidential candidacy receives a plurality of at least 40 percent of the votes cast, the persons comprising such candidacy shall become the President and Vice President-elect. Should no candidacy receive 40 percent of the votes, a runoff election shall be held between the two candidacies receiving the largest number of votes.

The day of the election shall be prescribed by Congress as well as the manner in which the candidacies to appear on the ballot

shall be determined, the places and manner in which the election shall be held, and the manner in which its outcome shall be determined, but the law of each State shall govern within such State as to such matters to the extent that such State law is not inconsistent with any act of Congress.

Voter qualifications within each State shall be the same as apply for the election of U. S. Senators, but Congress may prescribe uniform qualifications as to age and residence, and whenever no residence qualification by Congress is in effect, any State may prescribe a residence qualification less restrictive than that which applies in such State with respect to voters in elections of U. S. Senators.

Congress may provide for the death or withdrawal of a candidate on or before the date of an election.

H. J. Res. 463, Rep. Roush, and H. J. Res. 490, Rep. Harvey, are similar to H. J. Res. 447.

H. R. 17649, Rep. McCarthy, is similar to H. J. Res. 447, but without the latter's provisions as to voter qualifications, the provisions for determining candidacies, etc., and the provisions for legislation in consequence of the death or withdrawal of a candidate on or before the date of election. H. R. 17649 repeals Amendment 12.

H. J. Res. 1267, Rep. Hathaway, is similar to H. R. 17649.

H. J. Res. 470, Rep. Celler -

Provides for the direct election of the President and the Vice President. Provides that voters in each State shall have the qualifications requisite for electors of U. S. Senators and Representatives from the State, and that State legislatures may prescribe lesser residence qualifications and Congress may establish uniform residence and age qualifications.

A plurality of at least 40 percent of the whole number of votes cast respectively for the offices of President and Vice President shall be necessary for election to said offices. Failure to attain said plurality shall result in a runoff election in which the choice of President and Vice President shall be made from the persons who received the two highest numbers of votes for each office.

The times, places, and manner of holding such elections and entitlement to inclusion on the ballot in each State shall be prescribed by the legislature thereof, but Congress may make or alter such regulations. Congress may prescribe the time, place and manner for ascertaining and declaring the results of such elections.

Each voter shall cast a single vote jointly applicable to President and Vice President, the names of candidates for which shall have been joined by mutual consent, but no candidate shall consent to his name being joined with that of more than one person.

Days for such elections shall be determined by Congress and shall be uniform throughout the United States.

Congress may provide for the death of any candidate before the day on which a President-elect or a Vice President-elect has been chosen, and for the case of any tie.

H. J. Res. 598, Rep. Broomfield -

Similar to H. J. Res. 470. (Note: This is the proposal suggested by the American Bar Association with the one difference that the Association's proposal called for ratification by conventions in the several States and H. J. Res. 470 provides for ratification by the State legislatures).

H. J. Res. 461, Rep. Jarman -

This proposal would abolish the electoral college system and provide for lists of the popular vote in each State for candidates for President and Vice-President to be sent to the President of the Senate. In early January the popular votes would be counted at a joint session of Congress and the persons having the greatest number of votes for President and Vice-President would be elected.

Congress would be authorized to provide for the situation in which a person, but for his death, would have been entitled to receive a plurality of the votes for President or Vice-President.

H. J. Res. 545, Rep. Gubser -

Provides for direct election of the President and Vice President by the voters in the several States and the District of Columbia. In such an election one vote may be cast as a joint vote for the election of two persons who have mutually consented to be candidates, one for President and the other for Vice President. The team is designated as a "presidential candidacy."

The legislatures of each State shall prescribe regulations for the holding of such elections therein including the manner for determining which candidacies shall appear on the ballot as candidates and for determining the outcome of the election, but Congress may make or alter such regulations.

State qualifications for voting for U. S. Senator shall be applicable to voting in such presidential elections, but Congress may adopt uniform residence and age requirements for voting in such elections and where Congress does not enact uniform residence requirements, a State may adopt less restrictive residence requirements for voting in the presidential election than for U. S. Senator. Congress shall prescribe qualifications and regulations for such elections in the District of Columbia.

Forty-five percent of the votes cast is required for the election of a presidential candidacy. Should no candidacy receive such 45 percent, a runoff election shall be held in the same manner as the initial election, between the two candidacies receiving the largest number of votes.

Congress may provide for the case of the death or withdrawal of a candidate on or before an election or a runoff.

H. J. Res. 1284, Rep. Collier -

Provides for direct election of the President and Vice President by voters in the States and the District of Columbia. A candidate for President and a candidate for Vice President consenting thereto shall have their names presented jointly on the ballot so that a single vote shall be cast by each voter for a pair of candidates.

The person having the greatest number of votes for President shall be President, and the person having the greatest number of votes for Vice President shall be Vice President.

Voters for President and Vice President in each State shall have the qualifications requisite for voters of the most numerous branch of the State legislature, but Congress may establish uniform residence and age qualifications for presidential voters.

On or before December 15 of a presidential election year certified returns containing a separate listing of all votes cast for candidates for President and a separate listing of all votes cast for candidates for Vice President shall be sent from each State and the District of Columbia to the President of the Senate. On January 6, or on another day selected by Congress that is not earlier than January 4 nor later than January 10, the President of the Senate shall, in the presence of the Senate and the House, open all the certificates and the votes shall be counted. The pair receiving

the greatest number of votes is declared elected President and Vice President.

If the Presidential candidate who would have been entitled to election dies before the time fixed for counting the vote totals, the Vice Presidential candidate shall become President.

Congress shall provide procedures in consequence of the death or withdrawal of a candidate on or before the day of election and in case of any tie.

H. J. Res. 1130, Rep. MacGregor -

Provides for direct popular election of the President and Vice President. Empowers the legislatures of each State to prescribe the places and manner of holding the election but provides that the Congress may at any time by law make or alter state regulations.

Provides that the Congress shall prescribe the qualifications for voting and the places and manner of holding such elections in the District of Columbia.

Within 45 days after the election, or at such time as the Congress may direct, the returns are transmitted to the President of the Senate. These consisting of a list of all persons for whom votes were cast and the number of votes cast for each.

Provides that on the 6th day of January following the election, unless the Congress shall by law appoint a different day not earlier than the 4th day of January and not later than the 10th

day of January the votes shall be totaled in the presence of the Senate and the House of Representatives.

The candidates having the greatest number of votes shall be declared elected, if the number is a plurality amounting to at least 45 percent of the total number of votes certified.

If no pair of candidates receives the required amount then Congress is required to provide by law, uniform throughout the United States, for a runoff election to be held between the two pairs of candidates who received the highest number of votes certified.

If, at the time fixed for the counting of the votes from the States, the presidential candidate who would have been entitled to election shall have died, the vice presidential candidate entitled to election as Vice President shall be declared elected President.

Congress may provide by law for the case of the death or withdrawal, prior to the election, of a candidate for President or for Vice President and for the case of the death of both the persons who, except for their death, would have been entitled to become President and Vice President.

The Congress shall have power to enforce this article by appropriate legislation.

H. J. Res. 1413, Mr. Goodell -

Similar to H. J. Res. 1130 but provides that the candidates having the greatest number of votes be declared elected President and Vice President.

H. J. Res. 1415, Rep. Howard, is similar to H. R. 17649 but bases election upon receipt of a majority of the votes cast.

H. J. Res. 1430 Rep. Foley -

Provides for the direct election of the President and Vice President by the people of the several states and the district constituting the seat of government of the United States; except as Congress may otherwise by law provide, by the people of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam; and to such extent as Congress may by law provide, by the people of any other place subject to the jurisdiction of the United States.

That the qualifications for electors in the States in elections under this article shall be the same as apply in the case of electors in that State in elections of Senators, except that the Congress may by law prescribe uniform qualifications as to age and residence, but when no Congressional residence qualifications are extant the States may prescribe a residence less restrictive than that which applies in that State with respect to electors in elections of Senators.

Provides that except as Congress may otherwise by law provide, the qualifications for electors in any election under this article (1) in any jurisdiction having a legislature, other than a State, shall be the same as the qualifications of electors of the most numerous branch of the legislature and (2) in any jurisdiction

not having a legislature, shall be the same as the qualifications prescribed by Congress in implementation of the 23rd Amendment of the Constitution.

Provides that in elections held under this article that the Congress shall have the power to provide by law for the manner in which the names of the candidates to appear on the ballot shall be determined, for the places at which and the manner in which the election shall be held and the manner in which the votes are to be counted and reported. Where Congress has not so acted such matters are to be governed by the law of each State or other jurisdiction.

Each elector casts a single vote jointly applicable to President and Vice President. Candidates must consent to the joining of their names.

Provides that an election held pursuant to this article shall be held on a day which is uniform throughout the United States, determined in such manner as the Congress shall by law prescribe, and that the persons having the greatest number of votes for President and Vice President shall be elected if they receive at least 40 percent of the votes. If no candidates receive the 40 percent, a runoff election shall be held between the two who received the highest number of votes.

Requires that Congress provide procedures to be followed in the event of the death or withdrawal of a candidate on or before the date of an election under this article, and that Congress may provide for the case of a tie.

Provides that this article not apply to any for a term of office beginning earlier than two years after the date on which the ratification of this article by a sufficient number of States is completed.

H. J. Res. 1457, Mr. Hosmer, similar to H. J. Res. 470.

H. J. Res. 1463, Mr. Mathias of Maryland, similar to H. J. Res. 470.

H. J. Res. 1468, Mr. Thompson of Georgia. Similar to H. J. Res. 1415 but provides for a runoff if no candidate receives a majority of the votes cast.

Action - 90th Congress

Hearings on the Senate joint resolutions were held by the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, on May 16, 17, July 12, 13, 14, 18, 19, 20, 25, and August 23, 1967. No measure was reported from Committee.

91st Congress

S. J. Res. 1, Mr. Bayh for himself, Mr. Aiken, Mr. Bellmon, Mr. Bible, Mr. Burdick, Mr. Byrd of West Virginia, Mr. Case, Mr. Church, Mr. Cook, Mr. Cranston, Mr. Eagleton, Mr. Goodell, Mr. Gravel, Mr. Harris, Mr. Hartke, Mr. Hatfield, Mr. Inouye, Mr. Jackson, Mr. Javits, Mr.

McGovern, Mr. McIntyre, Mr. Magnuson, Mr. Mansfield, Mr. Mathias, Mr. Metcalf, Mr. Mondale, Mr. Montoya, Mr. Muskie, Mr. Nelson, Mr. Packwood, Mr. Pastore, Mr. Pearson, Mr. Pell, Mr. Proxmire, Mr. Randolph, Mr. Ribicoff, Mr. Schweiker, Mr. Tydings, Mr. Williams of New Jersey, and Mr. Young of Ohio.

Provides for the direct election of the President and Vice President and requires that a single vote be cast for both candidates both having consented to the joining of their names.

Voters in each State must have the qualifications necessary to vote in that State for members of Congress, except that States may reduce residency requirements for voting for these two offices. Congress may adopt uniform age and residency requirements in such elections and must prescribe the qualifications for voters from the District of Columbia.

The pair having the greatest number of votes shall be declared elected if it receives at least 40 percent of the total vote cast. If no pair receives 40 percent then a runoff is held between the two pairs of persons receiving the highest number of votes certified.

Congress is to provide for uniform days for these elections. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot are to be determined by the States; but Congress may alter such regulations. Congress provides for the election process in the District of Columbia.

Congress is to prescribe the time, place, and manner in which the results of such election are to be ascertained and declared.

If, at the time of declaring the results, the winning presidential candidate has died then the vice presidential candidate of his party shall be declared elected President.

Empowers Congress to provide for the case of the death or withdrawal of any candidate for President and Vice President and for the case of the death of both the President-elect and Vice President-elect and to provide for ties.

Congress is given the power to enforce this article by appropriate legislation.

S. J. Res. 20, Mr. Mansfield for himself and Mr. Aiken. Similar to S. J. Res. 179, 90th Congress but provides for selection of party candidate by 40% of the total vote cast in that party's primary and provides for a runoff in the event no candidate receives 40% as in S. J. Res. 179 but does not provide for procedures for transmittal of runoff returns and their counting.

Provides that Congress may provide for cases in which 2 or more candidates receive an equal number of votes and for methods of determining disputes arising in the counting and canvassing of votes.

S. J. Res. 30, Mr. Byrd of West Virginia.

Provides for the direct election of the President and Vice President. Candidates must consent to the joining of their names.

State legislatures prescribe the places and manner of holding the election but must include on their ballot the names of all such pairs that have consented to the joining of their names. Congress may alter such State regulations.

State voters must have the qualifications required to vote for Members of Congress, but States may adopt less restrictive residence requirements, and Congress may adopt uniform residence and age requirements for such voters.

Congress prescribes voter qualifications in the District of Columbia and the places and manner of holding such election.

Within 45 days after the election, unless Congress directs otherwise, the returns are transmitted to the President of the Senate.

On January 6 following the election unless Congress appoints a different day not earlier than January 4, or later than January 10, the votes shall be counted in the presence of the Senate and House of Representatives. The pair of candidates receiving the greatest number of votes shall be declared elected if such number is at least 40% of the total vote. If no pair receives such a percentage then Congress shall provide for a runoff election between the two pairs that received the highest number of votes.

If prior to the counting of the votes the presidential candidate who would have won has died then his Vice Presidential candidate shall be declared elected.

Congress may provide for the death or withdrawal of a candidate prior to election and for the death of both winning candidates.

Gives Congress power to enforce by appropriate legislation. Similar to S. J. Res. 2, 90th Congress.

S. J. Res. 31, Mrs. Smith. Similar to S. J. Res. 6, 90th Congress.

S. J. Res. 72, Mr. Hatfield -

Vests the executive power in the President.

Provides that the party candidates for President be nominated by direct popular vote at a primary election. Permits only registered party voters to participate in this primary.

Requires candidates to be members of the party whose candidacy they are seeking and requires such candidates to file with the President of the Senate, a petition signed on or after Jan. 1 of the year in which the primary is to be held by a number of qualified voters equal in number to at least one percent of the

number of votes cast for all candidates for President in the most recent previous presidential election; such petition to be filed not later than the 1st day of March in that year unless Congress appoints a different day.

The President of the Senate may request the chief executive of any State or the District of Columbia to determine and certify the number of signatures on the petition which are valid signatures of qualified voters of his State or District.

On or before March 15 of the election year, unless Congress appoints a different day the President of the Senate certifies to the chief executive of each State and the District the names of the persons who have qualified and their political party.

The time of the primary shall be uniform and unless Congress appoints a different day shall be held on the third Tuesday after the third Monday in May.

Within 20 days after the primary, or at such time as Congress may prescribe, the chief executive of each State and the District shall certify and transmit under seal to the President of the Senate the results from their State or District. Such returns shall be counted in the presence of the Senate and House majority and minority leaders and the Speaker of the House. The person receiving the largest number of votes of the party of his affiliation shall be the candidate of such party, if he receives a plurality of at least 40 percent of the vote.

If no such plurality is received, then a runoff shall be held on the third Tuesday after the third Monday in July following the primary, unless Congress shall appoint a different day.

Upon ascertainment of the results of such runoff the President of the Senate shall certify the same to the chief executive of each state and the District.

The political parties that have presidential candidates then nominate a candidate for Vice President.

Provides that in the event of the death, resignation or disqualification of the candidate of a party the vice presidential candidate shall become the presidential candidate of such party.

In the event of the death, resignation, or disqualification of both candidates or only the vice presidential candidate a national committee of that party shall designate replacements, but in so choosing the vote shall be taken with each State having one vote. A majority of States is necessary to a choice.

Such substitutes are then certified to the States and the District.

The manner and places of holding the primary or runoff are to be determined by the States unless Congress provides otherwise.

Abolishes the electoral college and provides for direct election of the President and Vice President in the first Tuesday after the first Monday in October unless Congress appoints a different day.

State legislatures prescribe the places and manner of holding the election but Congress may alter such regulations.

Within 20 days after the election the returns are transmitted sealed to the President of the Senate. On or before the 10th day of November, unless Congress appoints a different day, the results are counted in the presence of the Speaker of the House of Representatives and the majority and minority leaders of both Houses.

If no candidate receives the plurality of 40 percent needed to win, a runoff is held between the two candidates with the highest number of votes.

Requires Congress to provide for the conduct of the runoff which is to be held, unless Congress provides otherwise, on the first Tuesday after the first Monday in December.

Provides that if, at the time fixed for the counting of the votes, the candidate entitled to election as President shall have died that the vice presidential candidate of that party shall be declared elected President and that Congress may provide for new elections in the event of the death of both such persons.

Empowers the Congress to provide for those instances where two or more candidates receive an equal number of votes and for methods of determining any dispute or controversy that may arise in the counting and canvassing of the votes cast in these elections.

Qualifications for voters in each State are those requisite for electors of Congress of that State but States may provide a less restrictive residence requirement and Congress may adopt uniform residence and age requirements for voting in these elections and shall prescribe voter qualifications in the District for the purposes of this article.

Gives Congress the power to enforce this article by appropriate legislation.

Provides that this article shall take effect on the 21st day of January following its ratification.

S. J. Res. 181, Mr. Eagleton for himself and Mr. Dole -

Provides for the direct election of the President and the Vice President. Requires the consent of the candidates to the joining of their names on the ballot, and prohibits them from consenting to having their names joined with more than one person.

Voter qualifications in each State are those requisite for the voters of the State's Members of Congress, except that a State may adopt lower residence requirements for voters for President and Vice President. Congress may adopt uniform residence and age requirements for such voting. Congress prescribes voter qualifications for the District of Columbia.

The pair of candidates that receives the greatest number of votes shall be declared elected if it also received the greatest

number of votes in States containing more than 50 percent of the total number of voters in the election or in more than 50 percent of the States.

If the pair of candidates that receives the greatest number of votes does not attain the standards set forth above then the votes received by each pair of candidates are separated according to the States in which they were received and in each such State the pair receiving the greatest number of votes is awarded the electoral votes of that State equal to the number of the Senators and Representatives of the State in Congress, and if any pair of candidates receives a majority of the electoral votes of all the States, they shall be declared elected.

If no pair receives a majority by this method then the electoral votes of the other candidates are divided between the two pairs that received the greatest number of electoral votes in proportion to the number of people who voted for these two pairs of candidates in such State. The pair receiving the greatest number of electoral votes after this crediting shall be declared elected.

The days for such elections shall be determined by Congress and be uniform. The times, places, and manner of holding the election and entitlement to inclusion on the ballot are determined by the State; but Congress may alter such regulations. Congress makes such determinations for the District of Columbia.

Congress sets forth the regulations for ascertaining and declaring the results of the elections.

If the presidential candidate dies before the declaration of results then the vice presidential candidate is declared President.

Congress is to provide for the case of the death or withdrawal of any such candidates; for the case of the death of both President-elect and Vice President-elect and in case of a tie.

Provides Congress with the power to enforce the article with appropriate legislation.

Treats the District of Columbia as a State for purposes of the amendment.

H. J. Res. 5, Mr. Bennett -

Provides for direct election of a "presidential candidacy" (defined as a candidate for President and a candidate for Vice President who have consented to have their names appear together on a ballot jointly in the States and the District of Columbia for which only one vote need be cast). If a presidential candidacy receives a plurality of at least 40 percent of the votes cast, the persons comprising such candidacy shall become the President and Vice President-elect. Should no candidacy receive 40 percent of the votes, a runoff election shall be held between the two candidacies receiving the largest number of votes.

The day of the election shall be prescribed by Congress as well as the manner in which the candidacies appear on the ballot, the places and manner in which the election shall be held, and the manner in which its outcome shall be determined, but the law of each State shall govern within such State as to such matters to the extent that such State law is not inconsistent with any act of Congress.

Voter qualifications within each State shall be the same as apply for the election of U.S. Senators, but Congress may prescribe uniform qualifications as to age and residence, and whenever no residence qualification by Congress is in effect, any State may prescribe a residence qualification less restrictive than that which applies in such State with respect to voters in elections of U.S. Senators.

Congress may provide for the death or withdrawal of a candidate on or before the day of the election. Similar to H.J. Res. 447, 90th Congress.

H.J. Res. 12, Mr. Boland. Similar to S.J. Res. 30, 91st Congress.

H.R. Res. 13, Mr. Burlison of Missouri -

Provides for the direct election of the President and Vice President.

Provides that voters in each State shall have the qualifications requisite for electors of U. S. Senators and Representatives from the States, and that State legislatures may prescribe lesser residence qualifications and Congress may establish uniform residence and age qualifications.

A plurality of at least 40 percent of the whole number of votes cast respectively for the offices of President and Vice President shall be necessary for election to said offices. Failure to attain said plurality shall result in a runoff election in which the choice of President and Vice President shall be made from the persons who received the two highest numbers of votes for each office.

The times, places, and manner of the holding such elections and entitlement to inclusion on the ballot in each State shall be prescribed by the legislature thereof, but Congress may make or alter such regulations. Congress may prescribe the time, place, and manner for ascertaining and declaring the results of such elections.

Each voter shall cast a single vote jointly applicable to President and Vice President, the names of candidates for which shall have been joined by mutual consent, but no candidate shall consent to his name being joined with that of more than one person.

H. J. Res. 40, Mr. Hamilton. Similar to S. J. Res. 30, 91st Congress.

H. J. Res. 43, Mr. Heckler of Massachusetts. Similar to H. J. Res. 5, 91st Congress but requires that Congress prescribe qualifications for voters in the District of Columbia in any election held under this article.

H. J. Res. 50, Mr. Macdonald of Massachusetts.

Requires that Congress provide by law for a national preferential primary election to select candidates for the office of President and Vice President and shall provide for the election of the President and Vice President by the popular vote of the people of the United States.

H. J. Res. 88, Mr. Smith of New York. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 99, Mr. Ullman -

Provides that in lieu of the present method of electing the President and Vice President that they shall be elected by direct vote of the people. Congress is to provide for the nomination of candidates for President by a national primary election and for direct election of the President and Vice President.

H. J. Res. 128, Mr. Broomfield. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 152, Mr. Howard -

Vests the executive power in the President and provides for a four year term for the President and Vice President.

Provides for direct election of the President and Vice President, and requires a majority of the votes cast for election. If no pair of candidates receives a majority then provides for a runoff election between the two pairs of candidates receiving the highest number of votes.

Provides for a uniform day for the election to be determined by Congress.

Abolishes the electoral college.

Repeals the 12th Amendment.

H. J. Res. 154, Mr. Johnson of California. Similar to H. J. Res. 50, 91st Congress.

H. J. Res. 162, Mr. Ottinger. Similar to S. J. Res. 30, 91st Congress.

H. J. Res. 171, Mr. Van Deerlin. Similar to S. J. Res. 30, 91st Congress.

H. J. Res. 176, Mr. Whalley. Similar to H. J. Res. 50, 91st Congress.

H. J. Res. 179, Mr. Celler. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 182, Mr. Collier. Similar to H. J. Res. 1284, 90th Congress.

H. J. Res. 191, Mr. Thompson of Georgia. Similar to H. J. Res. 1468, 90th Congress.

H. J. Res. 197, Mr. Vanik. Similar to S. J. Res. 30, 91st Congress.

H. J. Res. 226, Mr. Waldie. Similar to H. J. Res. 50, 91st Congress.

H. J. Res. 257, Mr. Corman. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 259, Mr. Edmondson. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 268, Mr. Price of Illinois. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 274, Mr. Evans of Colorado -

Vests executive power in the President and provides that he and the Vice President shall serve a four year term.

Provides that candidates for the offices of President and Vice President shall be selected as Congress may provide, and that

such candidates be placed on the ballot in each State in a manner that one vote will suffice for the Presidential and Vice Presidential candidates of a party.

Provides that no person, except a natural born citizen, shall be eligible to the Office of President; neither shall any person be eligible to the office that is not 35 years of age and been fourteen years a resident within the United States.

Provides that upon either removal, death, resignation, or inability of the President that the Office of President shall devolve on the Vice President; and that Congress may provide for the case of such removal, death, resignation, or inability of both the President and the Vice President, declaring what Officer shall then act as President until the disability be removed or a President elected.

Provides for compensation of the President and for the oath that the President takes upon assuming the Office.

H. J. Res. 289, Mr. Helstoski. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 290, Mr. Hosmer. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 292, Mr. Moss for himself and Mr. Anderson of California, Mr. Brown of California, Mr. Hanna, Mr. Hawkins, Mr.

Leggett, Mr. Rees, Mr. Royal, and Mr. Charles H. Wilson. Similar to H. J. Res. 50, 91st Congress.

H. J. Res. 317, Mr. O'Hara for himself, Mr. Addabbo, Mr. Annunzio, Mr. Boland, Mr. Bolling, Mr. Byrne of Pennsylvania, Mr. Dickinson, Mr. Donohue, Mr. Eilberg, Mr. William D. Ford, Mrs. Hansen of Washington, Mr. Harvey, Mr. Hathaway, Mr. Jacobs, Mr. Kyros, Mr. Long of Maryland, Mr. Mikva, Mr. Mollohan, Mr. Moorhead, and Mr. Nedzi. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 318, Mr. Anderson of Illinois for himself, Mr. Halpern, Mr. Olsen, Mr. Patten, Mr. Pepper, Mr. Podell, Mr. Pryor of Arkansas, Mr. Rooney of Pennsylvania, Mr. St. Germain, Mr. St. Onge, Mr. Schwengel, Mr. Shipley, Mr. Thompson of New Jersey, Mr. Udall, Mr. Vigorito, Mr. Waldie, Mr. Wolff, Mr. Wright, and Mr. Yatron. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 336, Mr. Biaggi. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 354, Mr. Roybal. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 364, Mr. Feighan. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 368, Mr. Hungate -

Provides that the President and the Vice President shall be elected by direct popular election.

Requires that the electors in each State have the qualifications required for voters for the Senators and Representatives for that State. A State may provide for reduced residency requirements and Congress may establish uniform residence and age qualifications.

Provides that States may regulate the times, places, manner of holding the election and entitlement to inclusion on the ballot; but that Congress may alter such regulations. Congress prescribes how the results are ascertained and declared.

Congress determines the days for the election.

Congress may provide for the case of the death of a candidate and for the case of a tie in any election.

To be elected a candidate must receive at least 40 percent of the votes cast.

If no candidate receives 40 percent then the House of Representatives shall meet at such time as the Congress shall by law prescribe to select by ballot the President-elect and Vice President-elect. A quorum for such purpose shall be a majority of the total number of Representatives. From the two presidential candidates that received the greatest number of popular votes cast in the election held under this article each Representative shall cast his vote for the presidential candidacy that received the greater number of popular votes in such election in the district from which such Representative was elected.

Additionally there shall be a number of national electoral votes equal to the product of two times the number of States in the United States. To the number of votes cast for each presidential candidacy as in the above paragraph there shall be added a number of national electoral votes which bears the same ratio to the total number of national electoral votes as the total number of popular votes received by such candidacy in such election for each of the two presidential candidacies. Applying this formula, whoever receives the most votes shall become the President-elect and Vice President-elect.

H. J. Res. 374, Mr. Stafford. Similar to H. J. Res. 99, 91st Congress.

H. J. Res. 378, Mr. Waldie. Similar to H. J. Res. 99, 91st Congress.

H. J. Res. 397, Mr. Kastenmeier. Similar to S. J. Res. 1, 91st Congress but provides that of the candidates the pair receiving the greatest number of votes shall be declared elected President and Vice President without the necessity of a runoff election.

H. J. Res. 402, Mr. McCulloch. Similar to S. J. Res. 30, 91st Congress, but does not provide for the case of the death of a presidential candidate.

H. J. Res. 444, Mr. Gilbert. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 472, Mr. Whalen. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 474, Mr. Gilbert. Similar to S. J. Res. 1, 91st Congress, but provides that a majority of votes is necessary to elect.

H. J. Res. 484, Mr. Cowger. Similar to H. J. Res. 1468, 90th Congress.

H. J. Res. 501, Mr. McFall. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 526, Mr. Rosenthal -

Provides for a 6 year term for President and Vice President and prohibits more than one term. Prohibits a Presidential successor that has served more than four years of another's term from serving again.

Provides for 3 year terms for Members of the House of Representatives.

Provides for direct election of the President and Vice President and requires that such candidates shall have consented to the joining of their names. Prohibits a person from consenting to appear with more than one person.

Provides that if a Presidential candidacy (Presidential and Vice Presidential nominees) receives a plurality of more than 40 percent of the total votes cast they shall be declared elected. If no such plurality is received then provides for a runoff between the two candidacies receiving the largest number of votes.

Congress is to determine a uniform day for the holding of such elections.

State laws govern such elections where they are not inconsistent with any act of Congress in effect pursuant to this act. In elections held under this act Congress has the power to provide for the manner in which the candidacies are to appear on the ballot, the places at which and the manner in which the election shall be held, and the manner in which its outcome shall be determined.

State voter qualifications are the same as those for the voters for Senators, except that Congress may prescribe uniform qualifications as to age and residence and where Congress has not acted the States may prescribe less restrictive residence requirements for these elections. Congress prescribes voter qualifications for the District of Columbia.

Congress is to provide procedures to be followed in case of the death or withdrawal of a candidate on or before the date of an election..

H. J. Res. 533, Mr. Moss. Similar to H. J. Res. 50, 91st Congress.

H. J. Res. 610, Mr. Jacobs. Similar to H. J. Res. 50, 91st Congress.

H. J. Res. 651, Mr. McDade, Similar to H. J. Res. 5, 91st Congress.

H. J. Res. 664, Mr. Dellenback. Similar to H. J. Res. 13, 91st Congress.

H. J. Res. 668, Mr. Reid of New York -

Provides for the direct election of the President and Vice President on the second Tuesday in October, unless Congress appoints a different day, and requires that such candidates shall have consented to the joining of their names on the ballot.

The States prescribe the places and manner of holding the election and must include the names of all the pairs who have so joined their names on the ballot. Congress may alter such state regulations.

State voters in this election must have the qualifications necessary to vote for their Members of Congress, but States may adopt less restrictive residence requirements. Congress may adopt uniform residence and age requirements for voting in such election.

Congress prescribes the qualifications for voting in such election in the District of Columbia, and the places and manner of holding the election in the District.

Within 28 days after the election, the official returns are to be transmitted to the President of the Senate.

On the third Tuesday of November following the election, the returns shall be opened and counted by the President of the Senate in the presence of the Senate and the House of Representatives. To be declared elected a pair of candidates must receive at least 40 percent of the total votes cast. If no pair of candidates receives such plurality then a runoff is held on the first Tuesday after the first Monday in December, unless Congress appoints a different day, between the two pairs of candidates receiving the highest number of votes certified.

The runoff election returns are treated in the same manner as the first election returns and the pair of candidates that receives the highest number of votes is declared elected.

Provides that in the event of the death or resignation or disqualification of a party Presidential candidate that the Vice Presidential candidate shall step up into the vacated position as Presidential candidate for the party. In the event of the deaths or resignations of both party candidates then a national committee of the party shall designate who shall then be the party candidates,

except that in so choosing each State shall have one vote. For this purpose a quorum shall consist of delegates from two thirds of the States, and a majority of all States shall be necessary to a choice.

Provides that if either before or after the election the winning Presidential candidate shall have died that his Vice Presidential candidate shall be declared elected President.

Congress may provide for the case of the death of both of the winning Presidential and Vice Presidential candidates.

Repeals the 2nd, 3rd, and 4th paragraphs of section 1, article II of the Constitution, the twelfth article of amendment to the Constitution, and sections 3 and 4 of the 20th article of amendment to the Constitution.

Becomes effective on the 1st day of June following ratification.

Empowers Congress to enforce this article by appropriate legislation.

H. J. Res. 681, Mr. Celler for himself, Mr. Feighan, Mr. Rodino, Mr. Rogers of Colorado, Mr. Donohue, Mr. Kastenmeier, Mr. St. Onge, Mr. Edwards of California, Mr. Hungate, Mr. Conyers, Mr. Jacobs, Mr. Eilberg, Mr. Ryan, Mr. Waldie, Mr. Mikva, Mr. McCulloch, Mr. Cahill, Mr. MacGregor, Mr. McClory, Mr. Smith of New York, Mr. Meskill, Mr. Sandman, Mr. Railsback, Mr. Biester, and Mr. Fish.

Provides for the direct election of the President and Vice President; requires that the candidates consent to the joining of their names and prohibits a candidate from joining his name with more than one other person.

Requires that the voters in such an election have the qualifications to vote in an election for the most numerous branch of their State legislature but empowers States to lessen residency requirements and that Congress may establish uniform residence requirements for the election.

Provides that the pair receiving the most votes shall be elected if they have received more than 40 percent of the votes cast. If no pair receives such a percentage then a runoff is held between the two pairs who received the highest number of votes.

Times, places, and manner of holding the election and entitlement to inclusion on the ballot are to be prescribed by the State legislatures, but provides that Congress may alter such regulations. The days for the elections are set by Congress and must be uniform. Congress prescribes the time, place, and manner in which the results of such elections are ascertained and declared.

Congress may provide for the case of death, withdrawal, or inability of a candidate before the election and for the case of the death or withdrawal of the President-elect and Vice President-elect.

Gives Congress the power to enforce the article by appropriate legislation.

H. J. Res. 682, Mr. Celler for himself, Mr. Brooks, Mr. McCulloch, and Mr. Coughlin. Similar to H. J. Res. 681, 91st Congress.

H. J. Res. 784, Mr. Brasco. Similar to S. J. Res. 1, 91st Congress.

H. J. Res. 887, Mr. Fascell. Similar to H. J. Res. 681, 91st Congress.

H. J. Res. 1417, Mr. Broomfield. Similar to S. J. Res. 179, 90th Congress.

H. J. Res. 1447, Mr. Taylor. Similar to S. J. Res. 179, 90th Congress.

H. J. Res. 1454, Mr. Olsen. Similar to S. J. Res. 179, 90th Congress.

H. J. Res. 1460, Mr. Fulton of Pennsylvania. Similar to S. J. Res. 179, 90th Congress.

H. R. 18, Mr. Ullman -

Titles the Act "National Presidential Elections Act."

Provides for the direct election of the President and Vice President, and for a national presidential primary election, to be held on the first Tuesday in September in the year prior to the expiration of a presidential term.

To be eligible a candidate must indicate a party preference.

To qualify under this act a political party must either in not less than two-thirds of the States have had a presidential candidate in the preceding presidential election that received not less than 25 percent of the total vote cast in that State, or have filed with the chief election officer of the State concerned a petition requesting the official participation of the party with its candidates in the presidential primary and signed by at least 5 percent of the qualified voters of such State.

To participate, a political party must file not later than 90 days before the primary with the National Presidential Elections Commission satisfactory evidence that the party has met the qualifications required by this act. "State" is defined by the act to include the District of Columbia.

To qualify in a primary held under this act a person must file with the Commission not later than 30 days prior to the election

evidence that in each of at least 2/3rds of the States he has either met the State qualifications for candidates for the presidential nomination of a party if the State has such a law or filed with the chief election officer of the State a petition signed by 2 percent of the qualified voters of the State, or 25,000 such signatures whichever is greater and file a statement indicating his preference of a qualified political party.

The party primary candidate that receives the greatest number of votes shall be his party's nominee for President.

Political parties that have qualified under this act must select by means of their choosing their Vice Presidential candidates before the third Tuesday in September.

The general election for President and Vice President is held on the first Tuesday after the first Monday in November. The candidates who receive the most votes and at least 45 percent of the total cast shall be declared elected President and Vice President. If no candidates receive such a plurality then a runoff election is held between the two pairs with the highest vote count. The pair that receives the greatest number of votes in the runoff election shall be declared elected President and Vice President.

Establishes a National Presidential Elections Commission composed of five members appointed by the President with the advice

and consent of the Senate, one of whom shall be designated chairman. Not more than three members of the Commission shall be of the same party. The members' terms end on December 31 following the election, and they serve without compensation.

The Commission appoints an Executive Director and other personnel as may be necessary. Gives the Commission authority to use the mails, and provides for administrative support for the Commission by the Administrator of General Services.

The Commission prescribes regulations for the presidential elections, both primary and general, and certifies the results to the Congress. Makes studies of the presidential electoral process and reports such findings to the Congress.

Elections held under this act are to be held in accordance with State law. Such laws are to be consistent with this act. Congress shall provide for the manner of conducting elections in the District of Columbia.

Provides for criminal penalties for violating or interfering with the right of any person to participate in an election held under this act, or hindering the operation of this act.

H. R. 6061, Mr. Waldie. Similar to H. R. 18, 91st Congress.

Action - All of the proposals were referred to the appropriate committees for consideration. As of this writing the only one that has been reported out of committee has been H. J. Res. 681. In regard to this measure the following floor action took place:

Debated with proposed substitute amendments September 9, 10, 11, 15, 16, 17, and 18, 1969.

On September 17, 1969, the House of Representatives sitting as the Committee of the Whole:

Rejected a district plan offered as a substitute by Mr. Dowdy by a teller vote of 159 yeas to 192 nays.

Rejected an automatic plan offered as a substitute by Mr. Eckhardt by a teller vote of 64 yeas to 98 nays.

Rejected a proportional plan offered as a substitute by Mr. Poff by a teller vote of 147 yeas to 179 nays.

Rejected a proposal by Mr. Wylie which incorporated the automatic plan, the proportional plan, the district plan, and the direct plan into one package and would allow the States to select the plan of their choice by voice vote. (Cong. Rec., Sept. 17, 1969; pps. H7982-H8006)

On September 18, 1969, the House of Representative sitting as the Committee of the Whole:

Rejected an amendment offered by Mr. Rogers of Colorado to H. J. Res. 681 that sought to raise the plurality necessary

for election from 40 percent to 45 percent by a teller vote of 67 yeas to 87 nays.

Rejected a substitute offered by Mr. Waggoner that sought to raise the plurality necessary to elect from 40 percent to 50 percent by a teller vote of 71 yeas to 91 nays.

Rejected an amendment offered by Mr. McClory that provided that this constitutional amendment be submitted to State ratifying commissions in lieu of State legislatures by a division vote of 9 yeas to 63 nays.

Also Rejected:

An amendment offered by Mr. Fish that sought to lower the plurality necessary to elect from 40 percent to 35 percent;

An amendment offered by Mr. Ryan that would provide for congressional control over voter eligibility in the States;

A substitute offered by Mr. Conyers that would leave to Congress the prerogative to establish uniform voter qualifications;

An amendment offered by Mr. Coughlin that provided if no pair of candidates received a 40 percent plurality, the decision would go to a joint session of Congress, with the choice being between the two highest contenders;

An amendment offered by Mr. Ryan that would transfer from the States to Congress control over times, places, and manner of holding elections and entitlement to inclusion on the ballot;

An amendment offered by Mr. Pucinski that proposed, for a runoff situation, that each State would ballot according to the number of congressional seats, this would then be totaled proportionately;

An amendment offered by Mr. Hutchinson that would prohibit candidates for President and Vice President to come from the same State; and

An amendment offered by Mr. Ryan that would provide for a separate vote for President and Vice President.

By a record vote of 162 yeas to 245 nays rejected a motion to recommit H. J. Res. 681 to the Committee on the Judiciary with instructions to report it back forthwith, incorporating the "district plan."

Agreed to an amendment offered by Mr. Poff that added the word "inability" to the phrase "death or withdrawal" in the proviso that Congress may by law provide, regarding candidates or the President-elect or Vice President-elect.

By a record vote of 339 yeas to 70 nays, the House of Representatives passed H. J. Res. 681. (Cong. Rec., Sept. 18, 1969, pp. H8104-H8143) and referred it to the Senate.

On September 30, 1969 the White House issued the following message in response to the passage of H. J. Res. 681:

In February of this year I committed this administration to support any reform of the electoral system that removed its most negative features. I said I would support any amendment approved by Congress that would make three specific reforms in the current system--one, eliminate the problem of the "faithless elector," two, make a 40 percent margin adequate for victory, and three, reform the system so that the electoral outcome more closely reflects the popular outcome.

It was my judgment then that the approach most likely to prevail in the country would be the proportional distribution method. I thought it had the best chance of being approved by the Congress and by three-fourths of the States.

Now there is an entirely new factor to be considered if we are to have electoral reform with all necessary speed. The House of Representatives has overwhelmingly supported the direct election approach. It is clear that unless the Senate follows the lead of the House, all opportunity for reform will be lost this year and possibly for years to come.

Accordingly, because the ultimate goal of electoral reform must prevail over differences as to how best to achieve that goal, I endorse the direct election approach and urge the Senate also to adopt it. While many Senators may prefer a different method, I believe that contrary views are now a luxury--that the need for electoral reform is urgent and should be our controlling consideration. I hope, therefore, that two-thirds of the Senate will approve the House-passed amendment as promptly as possible so that all of us together can then urge the States also to give their approval.

Arguments in Favor of Direct Election Plan - Those who favor the direct election plan argue as follows:

1. The result of a direct election would give a more accurate picture of relative party strength than do "electoral vote" results. When the party with the most popular votes in a State wins all the electoral votes for that State, the strength of the winner (in terms of electoral votes) tends to be exaggerated. The system creates "landslides." Thus in 1952 Eisenhower, with about 55 percent of the total popular vote, won over 83 percent of the Nation's electoral votes. In 1936 Roosevelt, with 60 percent of the popular vote, received 98 percent of the electoral votes.

As already noted, in eleven instances since 1824, including the 1948 and 1960 elections, the system has given a majority of the electoral votes to a candidate with only a plurality of the popular vote. In 1912 Woodrow Wilson, with only 42 percent of the popular vote, received 84 percent of the electoral votes.

Direct election would give a more accurate picture than "proportionate distribution" of electoral votes <sup>1/</sup> or a "district" elector scheme. <sup>2/</sup> Because they would preserve the "weighting" in

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1/ See page 94, post.

2/ See page 71, post.

favor of small states (three electoral votes regardless of population) and would continue to base the remaining electoral votes upon total population, not upon numbers of voters, both of the latter two systems would permit some distortion of results.

2. Direct election would make it impossible for the candidate with the largest number of popular votes to lose to a candidate with fewer popular votes. <sup>3/</sup> This can happen under the present system.

If the winning party carries many States by bare pluralities or narrow majorities, while its leading opponent acquires most of its electoral votes by wide margins, the candidate with a minority of popular votes may win a majority of electoral votes. A candidate receiving a minority of popular votes may also be elected when no candidate has a majority of electoral votes and the choice is made by the House of Representatives.

As mentioned above (see p. 18), the United States has had three minority Presidents. A "proportionate distribution" or "district" plan would reduce the possibility of a "minority" candidate. Still the candidate with the most popular votes might lose if

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<sup>3/</sup> Corwin, op. cit.; Lea, op.cit.; July 8, 1967: A3412-3: U. S. Congress. Senate. Committee on the Judiciary. Op. cit; Wechsler, Herbert. Presidential election and the Constitution: A comment on proposed amendment. American Bar Association Journal (Chicago), March 1949, V. 35: 181-4, 270-4. On the advantages of direct election, see Humphrey, Hubert H. Direct popular election of President and Vice President. Congressional Record [daily ed.] (Washington), March 9, 1953: 1793-5.

his opponent won most of his electoral votes in small States and areas where voting was light or restricted.

Direct election would do away with the "unit-rule" and prevent candidates with less than a majority of popular votes from being elected President.

3. Direct election would be simpler for the voter to understand than the present system. <sup>4/</sup> Some voters are confused by the presence of "electors" in the election process. In most States, it is true, the ballots indicate the Presidential candidates for whom each party's list of electors will vote. Thirty-five States and the District of Columbia do not name each individual electoral college nominee. Fifteen States, however, carry slates of electors in addition to the names of the Presidential candidates on some ballots. A few States provide for the listing of only the electors' names and not those of the Presidential candidates.

As the following account indicates, such confusion may have serious effects on election results:

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<sup>4/</sup> On the defects of the present system, see Kallenbach, Joseph E., Presidential Election Reform. Paper inserted in the Record by Sen. Henry Cabot Lodge, Jr. Congressional Record, April 13, 1949; Vol. 95, pp. 4448-52; U. S. Congress. Senate. Committee on the Judiciary, op. cit. On the advantages of direct election, see Humphrey, op.cit. "Electoral College Reform," Chamber of Commerce of the United States, Sept., 1963.

... at a recent election [1948] in Ohio approximately 160,000 more votes were cast in the gubernatorial contest than in the Presidential contest. In that State, because of litigation that delayed final certification of the Progressive Party's slate of electors on the ballot, the electors of that party had to be listed in full on the ballot unaccompanied by the names of the Progressive Party's candidates for President and Vice-President. The names comprising the Republican and Democratic electoral slates were omitted under the normal Presidential short ballot plan. Only the names of their Presidential and Vice-Presidential candidates appeared. Because of this peculiar arrangement a large number of voters cast invalid ballots in the Presidential contest by voting for Truman or for Dewey (i.e., for their undisclosed electoral slates) and also for some of the Progressive electors as well. Such invalidated choice accounted in large measure for the discrepancy in the Presidential and gubernatorial vote totals. The invalidated ballots may well have affected disposition of the State's electoral votes, for there was a difference of only about 7,000 votes in the Dewey and Truman totals out of a total of almost 3,000,000 votes cast. 5/

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5/ Kallenbach, Ibid. 95 Cong. Rec. 4449 (1949).

Any system such as the direct election system eliminating electors as individuals would simplify the election process for the voter. Both the Lodge-Gossett "proportionate distribution" plan and the Norris plan in 1934 would have retained electoral votes only as a counting device. A "district" plan in which individual electors were preserved would leave the way open for confusion (although the latest version would require the district electors to be bound to support their party's nominees).

4. Direct election would undoubtedly invigorate the two-party system in sections of the country where one party is now so firmly entrenched that no other parties have any incentive to try to win. 6/ Instead of Republican votes in certain southern States being relatively useless to the national party, they would be added to the national total. The same would be true for Democratic votes in heavily Republican States.

5. With direct election, party campaigns might be more evenly distributed throughout all parts of the country. 7/ Under

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6/ On the defects of the present system, see Kallenbach, op. cit. (1949); U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.; Kallenbach, Joseph E. Our electoral college gerrymander. Midwest Journal of Political Science, V. 4, May 1960: 162-191.

7/ On the defects of the present system, see: Ogg and Ray, Introduction to American Government. Tenth ed. New York, Appleton Century-Crofts, 1951, pp. 230-2, 246-55. U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit. Wechsler, op. cit.; "Electoral College Reform," Chamber of Commerce of the United States, Sept., 1963.

the present system, campaigns tend to be concentrated in the large "doubtful," so-called "pivotal," States. This is not surprising in view of the fact that a few popular votes in these States may control enough electoral votes to swing the election. Thus a shift of 0.5 percent of the popular votes in Ohio, Illinois and California in 1916 would have defeated Wilson, and a shift of only 1,200 votes in New York would have defeated Cleveland in 1884. In 1948, a shift of 17,000 votes in Illinois, 3,500 votes in Ohio, and 9,000 votes in California would have transferred 78 electoral votes from Mr. Truman to Mr. Dewey and the latter would have been elected despite the fact that his opponent had polled two million more popular votes. While the pivotal States, with their cities and other highly populated areas, would still be a rich source of votes in a direct election system, they would not be as overwhelmingly important as they are now.

6. Direct election would give every vote, regardless of where it was cast, equal weight (i.e., one voter-one vote). <sup>8/</sup>  
 Now a vote counts for more in a "close" State than in a "sure" State. A few voters in the pivotal States may possess the power to elect or defeat their candidate. In a State where the result is more or

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<sup>8/</sup> On the advantages of direct election, see: Humphrey, op. cit. On the defects of the present system, see: Lea, op. cit., July 8, 1947: A3412-3; July 16, 1947: A3545-7; U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; American Bar Association, Report of the Commission on Electoral College Reform, January, 1967, "Electing the President"; Banzhaf, John F., III, "Reflections on the Electoral College," 13 Villanova Law Review, p. 304, Winter, 1968.

less foreordained, the possibility of a similar group of voters swing-  
ing an election is almost non-existent. A vote may also have greater  
significance in a small State than in a large State. Small States  
have more electors relative to population. Fewer voters may control  
the electoral vote. The philosophy of this approach was recently  
strengthened by the United States Supreme Court in Hadley v. Junior  
College District. 397 U.S. 50 , Docket No. 37, Feb. 25, 1970,  
which held that "the guarantee of equal voting strength for each  
voter applies in all elections of governmental officials...."

7. Direct election would reduce the premium now placed  
on choosing Presidential candidates from large "key" States. <sup>9/</sup>

Under the present system, Presidential aspirants from the "pivotal"  
States have a disproportionate chance of receiving the nomination.  
By choosing a candidate from one of those States, a party may  
attract the few votes it needs to carry the State. Between 1900  
and 1949, 16 out of 26 major party candidates (17 if Theodore  
Roosevelt is counted as a major party candidate in 1912) came from  
New York or Ohio.

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<sup>9/</sup> On the defects of the present system, see: Kallenbach, op. cit.,  
(1949); Ogg and Ray, op. cit., U. S. Congress. House of Representa-  
tives. Committee on the Judiciary, op. cit.; Wechsler, op. cit.;  
U. S. Congress. Senate. Committee on the Judiciary, op. cit.

Even with direct election, it is true, parties might still find it politically advantageous (i.e., win more votes) to choose candidates from the old "pivotal" States. Also, the Governors of those States would continue to offer the type of political and administrative experience especially fitting for a Presidential candidate. Votes in all States being assigned equal value, however, the possibility that nominees might be drawn from smaller States would probably be increased.

8. Direct election would give the voters a legal voice in the choice of the President, not merely an expression of preference.<sup>10/</sup>

It has long been customary for the Presidential electors in each State to vote for the candidate nominated by their party. If those electors were to decide to transfer their votes to some other candidate, however, it is doubtful whether existing law can stop them from doing so. Although a number of State laws purport to control the functioning of Presidential electors, they would probably be held unconstitutional. It has been stated that an elector "cannot be compelled either by State law or by national law to register his choice for the candidate regularly nominated by his party at its

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<sup>10/</sup> On the advantages of direct election, see: Humphrey, op. cit., On the defects of the present system, see: Kallenbach, op. cit. (1949); Ogg and Ray, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit. On the advantages of direct election, see: Humphrey, op. cit.

national convention." <sup>11/</sup> Attempts to enforce against the Alabama electors a State law requiring Presidential electors to vote for the candidate named at their national party convention were unsuccessful, both in the Alabama Supreme Court and in the Federal courts. <sup>12/</sup> And see cases in footnote on page 56.

9. Because each vote would count equally, direct election would almost certainly encourage more people to vote. <sup>13/</sup> It has been observed that voter participation has tended to be higher in "close" or "doubtful" States, where campaigning is concentrated and the power of votes is known to be high, than in other States.

A "proportionate distribution" plan which divided electoral votes according to popular strength might similarly provide an incentive to vote. The more popular votes a party received, the greater would be its share of the electoral vote. As long as each State's electoral vote was fixed by the size of its Congressional delegation, however, an absolute limit would remain on the electoral strength which a State could attain. Although increased competition between parties might result in more people voting, no electoral advantage would accrue from a generally high voting turnout.

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11/ Kallenbach, Ibid., p. 4449 (1949).

12/ Folsom, et al. v. Albritton, et al. (335 U.S. 802, Dec. 6, 1948); Adcock, et al. v. Albritton, et al. (335 U.S. 887, Dec. 6, 1948); also advisory opinion of the Alabama Supreme Court. In re Opinion of the Justices (250 Ala. 399, 34, 50 (2nd) 598 (1948)). Cited in Kallenbach, Ibid. (1949).

13/ On the defects of the present system, see: Kallenbach, op. cit. (1949). On the advantages of direct election, see Humphrey, op. cit.

10. With direct election, it would be unnecessary to preserve the system of referring a close election to the House of Representatives. 14/ The House of Representatives has been called upon twice to elect a President, first in 1800 and then in 1824. In 1800 the House elected the candidate, Jefferson, who had received the most electoral votes, but the political reaction produced the 12th Amendment to prevent a recurrence of the circumstances which made it impossible for the electoral college to decide that election. In 1824, as has already been mentioned, it chose John Quincy Adams over Andrew Jackson, despite Jackson's plurality of electoral votes.

Under the existing system it would be possible for a House of Representatives, because of inability to give a majority to one candidate, to fail to elect a President by January 20th, leaving the Vice President-elect to serve in the interim. If Dewey had received "a very few thousand more votes" in Ohio and California, it has been suggested, this might have happened in 1948. With the election referred to the House, the make-up of the State delegations in the House at that time was such that the election might well have been deadlocked--21 for Truman, 20 for Dewey, 4 for Thurmond and 3 States ineffective because their delegations were evenly divided between the Republicans and the Democrats.

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14/ On the defects of the present system, see: Corwin, op. cit.; Kallenbach, op. cit. (1949); Lea, op. cit., July 24, 1947; A3874-5; Ogg and Ray, op. cit.; U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress, Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.

As noted, a "proportionate distribution" plan of electoral vote would abolish the system of giving each State, large or small, one vote in elections placed in the hands of the House of Representatives. It would allow each individual Representative and Senator to cast one vote. This could well reduce the chances of a "minority" President being elected, but it might not eliminate the possibility.

11. The results of a direct election would be little affected by accidents and frauds--fraudulent voting or fraudulent counting. <sup>15/</sup> Under the present method of election, close States may be won or lost by such extraneous circumstances as rainy days or blizzards. This system is also highly sensitive to frauds. It is unlikely, however, that the results of any nationwide direct election would be so close that minor accidents or small-scale frauds would have a significant effect on the outcome.

12. With direct election there would be no risk of complications arising between the time the people cast their votes and the day the President was legally elected. <sup>16/</sup> When the choice of the President is not final until a meeting of the electors some weeks after

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<sup>15/</sup> On the defects of the present system, see: U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.

<sup>16/</sup> On the defects of the present system, see: Corwin, op. cit.; Kallenbach, op. cit., p. 4450 (1949); Lea, op. cit., July 24, 1947: A3874-5; Ogg and Ray, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.

the "Presidential election," confusion or uncertainty may arise because of the ineligibility (e.g., because of holding some Federal office) of an elector. If an ineligible elector were discovered too late in a close election to be replaced, the invalidation of his vote might affect the result of the election. (Many States, though, provide for the filling of vacancies in the State's group of electors by the electors themselves).

Further confusion may be caused if electors fail to function in the proper place on the proper day, which happened with the Wisconsin electors, owing to a blizzard in 1857.

As was observed during President Eisenhower's post-election trip to Korea late in 1952, the situation would be even more complicated if a "President-elect" were to die or be killed between election day and the day the electors meet. If this were to happen, the choice of a President would apparently fall to the individual electors, acting on their own initiative, although both major parties provide for the making of nominations in such circumstances.

13. Direct election would permit the establishment of nationwide standards for voting in Presidential elections. For election of the national Chief Executive, it is difficult to justify different voting standards in different States. The privilege of voting for the President should be enjoyed equally by all citizens. It would not be necessary to extend national voting laws to cover State and local elections, which could remain under the control of the States.

Current proposals would provide for election of the President and Vice President by qualified voters in each State who shall have the same qualifications requisite for electors of the most numerous branch of the State legislature, but Congress would be authorized to alter State regulations on the manner of holding such an election.

14. Direct election would relieve the major parties of having to make excessive concessions to minority groups. <sup>17/</sup> Minority groups would not be able to derive undue bargaining strength from their balance-of-power position, from their ability to swing all the electoral votes of key States to one or the other major candidate.

15. Direct election would not necessarily lead to an undue multiplication of parties. <sup>18/</sup> The two-party system has generally been preserved in the election of Senators, Members of the House of Representatives, and State Governors, among others. All these officials are chosen directly by the people, with a plurality of the votes cast required for election. All systems in which victorious

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<sup>17/</sup> For arguments that the present system gives undue weight to minorities, see: Kallenbach, op. cit. (1949); U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; Wechsler, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit. On the advantages of direct election, see Humphrey, op. cit.

<sup>18/</sup> On the relationship between the present electoral system and the two-party system, see: Kallenbach, op. cit. (1949); U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.; American Bar Association, Report of the Commission on Electoral College Reform, January, 1967, "Electing the President."

candidates must receive more votes than any other candidate would appear to discourage the development of more than two, or at most three, parties. Voters seem to be reluctant to "waste" their votes on candidates who have no chance of being elected. The latest versions of the direct election plan require receipt of at least 40 percent of the votes and this should help to stifle the rise of serious third parties.

Arguments Against Direct Election Plan - Those who oppose the direct election plan, argue to the contrary as follows:

1. Direct election would permit the growth of minor parties which would be likely to have a divisive effect on national politics.<sup>19/</sup> It would no longer be necessary for a winning candidate to win a majority of votes in the Electoral College or the House of Representatives although under the latest version of the direct election plan it would be necessary to win 40 percent of the popular vote. The probability would be great, however, that runoffs would be frequent since the proposal would permit any party that had registered as members more than 10 percent of the total registered voters in the United States to run candidates in every State.

The fact that parties have not multiplied in Congressional or State Governor elections gives no assurance that the two-party system would not break down with direct election of the President.

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<sup>19/</sup> On the possibility of party fragmentation, see: Ogg and Ray, op. cit.; Wechsler, op. cit.

Even under the restrictive electoral college system now in operation, minor parties are not unknown. In 1948 there were eleven Presidential candidates, three of whom (Truman, Dewey and Thurmond) won electoral votes.

2. Direct election might impair the "unifying" function of the two major parties.<sup>20/</sup> It can be argued that the essential feature of our party system is that each major party recognizes and protects the legitimate interest of all substantial economic, social, sectional, religious, racial or other groups in the Nation. The unifying function might be impaired by reducing the pressure upon the major parties to heed the interests of minority, factional or sectional groups.

It would be difficult to prove that minority groups in pivotal States now exert disproportionate influence on major party programs. It is a matter of justice that the legitimate interests of minority groups should be fairly represented. Evidence indicates that "some of those who ... want the major parties freed from the necessity to give undue recognition to minority groups ... wish the major parties to give such groups no recognition whatever." <sup>21/</sup>

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<sup>20/</sup> On the advantages of the present system, see: Becker, Carl. The will of the people. Yale review (New Haven), March 1945, v. 34, 385-404; U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit., Minority views by Clifford P. Case.

<sup>21/</sup> U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit., Minority views by Clifford P. Case., pp. 30-31.

In addition, it can be argued, so long as both major parties have regard for the interests of the minority groups, few members of such groups feel compelled to form special interest blocs or parties for their own protection. Also, their more extreme demands are moderated.

3. Direct election would deprive small and sparsely populated States of a slight advantage enjoyed through the distribution of electoral votes according to the size of Congressional delegation.

No State, they claim, would have any more weight than it would be entitled to by its popular votes. At the present time the majority of the voting population is found in some nine States. For the sparsely-populated States, direct election would impose a positive disadvantage. It is easier to "get out" votes in highly-populated urban areas.

By weighting the composition of the electoral college in favor of small States, the authors of the Constitution helped to reconcile those States to the idea of federation. It cannot be doubted that at various times during the history of the Nation this

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22/ For a defense of the weighting in favor of small States, see: U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit.; Lea, op. cit. July 18, 1947: A3622-3, July 22, 1947: A3729-31. But for the argument that the voting power of residents of the more populous States is greater in Presidential elections under the existing system, see: Banzhaf, John F., III, "Reflections on the Electoral College," 13 Villanova Law Review, p. 304, Winter, 1968.

concession has substantially contributed to the stability of the Government. Although the provision has probably ceased to be essential to the survival of federal union in the United States, and has never been the only protection for small States, it may even now help to cement the loyalty of those States, to prevent them from feeling "trodden upon."

4. Direct election would almost inevitably bring irresistible pressure for national laws governing qualifications for voting.<sup>23/</sup> If control over such matters as minimum voting age, educational qualifications or payment of a poll tax were left with the States--as it supposedly would have been under the Lemke and Langer plans for direct election--they argue that State legislatures would be under pressure to reduce their voting standards to the "lowest" existing level. Thus, to allow their people to cast as many votes relative to population as the citizens of Georgia, all States would have to reduce their voting age to 18 years. There would be a possibility, if not a likelihood, of an indiscriminate "rush" to lower voting standards.

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23/ On the problems likely to arise with State control of voting, see: U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit.

The major differentiating factor now in the size of the States' electoral votes is population. Under direct election this would be replaced by voter turnout and such participation would determine the extent of each State's influence over the outcome. Not only would irresistible pressure to lower voting qualifications arise, but there could also be consequent changes in the relative influence of States and areas.

Establishment of a national voting law for the Presidential election would be likely to threaten State control over voting for Representatives, Senators, and possibly State and local officials. Lack of uniformity in State laws would be specially difficult to defend in elections for other Federal officials, i.e., Representatives and Senators. Among other things, it would be awkward to have different sets of people voting for different officials on the same election day.

Although uniform voting laws might be more equitable to the voter, it is claimed that they would represent a blow to the State power. If it is intended that the States should continue to possess some independent authority in our federal system, it is fitting that they should retain at least part of their control over voting. Thus, while uniform rules for voting in Presidential elections might not be incompatible with generally accepted principles of federalism, such Federal

laws might eventually infringe improperly upon State authority in State elections.

5. Direct election of the President could well result in enlarged regulatory authority over political parties by the federal government and replace the existing system of parties mainly regulated by State law.

Under the latest direct election proposal parties meeting federal requirements would automatically have their presidential candidates placed on the ballot in every State, without any clear directive as to State control over the establishment, registration, etc., of such parties.

6. It is possible to exaggerate the risks inherent in the present system of electing the President. <sup>24/</sup> As has been stated above, it has been necessary in just two instances to refer an election to the House of Representatives. Both cases occurred early in the 19th Century. In only one case (1824) did election by the House result in the selection of a "minority President" (John Quincy Adams). In 1800, as has been observed earlier, the House elected the person (Jefferson) who had received a plurality of electoral votes.

In no case has a "questionable" electoral result failed to be accepted peacefully, however reluctantly, by the people.

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24/ Becker, op. cit.

7. With direct election, the States would cease to be "electoral entities" in the choice of the President.<sup>25/</sup> Although appeals to State pride would no doubt continue to be effective vote-getters, State lines would almost certainly be less important in the conduct of campaigns than they are now. Returns would no longer be counted by States. The general effect would probably be to emphasize the importance of the central government relative to the State governments. While opinions differ, it can be argued that in a federal system we should rather reinforce and enhance State authority and prestige in an attempt to avoid over-centralization.

Federalism, one of the fundamental premises of the American system, could be endangered by direct election of the President.

8. Direct election would tend to increase campaign expenditures. Already the costs of electoral campaigning are enormous. To the extent that such campaigning were seriously undertaken in all parts of the country, they would be even greater. It may be that election issues should be put before the greatest possible number of voters, but the major parties could not undertake much more campaigning than they do now without the costs being prohibitive. Because highly

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25/ U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.

populated "key" States and large cities would continue to be such good sources of votes, the parties might be tempted to limit their campaigning to those areas only, in order to limit expenses. The principal candidates might have difficulty in reaching all parts of the country. (While television has reduced this last difficulty, the high costs of such programming have reintroduced it in a different form.)

9. Exaggeration of election results under the electoral college system may not always be undesirable. It has been argued that "illusory" electoral strength is a feeble basis for the exercise of power and may lead to the abuse of authority. However, the appearance of strength may give a President useful, perhaps even necessary, prestige and moral force in leading the country. Such additional prestige may be especially useful during transition periods accompanying changes of administration.

10. Direct election might unduly upset the existing balance of power between the major political parties. The probable effects of the different method of election can only be guessed. Changes in issues and personalities, not to mention number of parties, make it almost impossible to predict these effects with any degree of accuracy. Other things being equal, both the Republican and the Democratic parties would probably poll more popular votes in areas

currently dominated by the opposite party. However, the results might be startling and the political repercussions extensive. The net effect might not be beneficial to the national interest.

11. Direct election is the most drastic remedy for the shortcomings of the present system. <sup>26/</sup> A more moderate solution might remove some of the obvious defects of that method.

"Proportionate distribution" <sup>27/</sup> of electoral votes, for example, while leaving control over elections and the distribution of electoral votes undisturbed, would lessen the possibility of "minority" Presidents and would probably invigorate the two-party system in sections of the country where one party is now virtually unchallenged. By changing the method of voting in elections referred to the House of Representatives, the risks inherent in the "one State, one vote" rule might be eliminated. Or, by a simple amendment abolishing electors (as individuals) and requiring popular determination of electoral votes (automatic plan), it would be possible to guarantee the people the voice in elections which is now based simply on custom, tradition, and usage.

12. The presumption is against Constitutional amendment unless the general welfare will be clearly benefited. Both the fact that the fundamental law should not be lightly changed and the fact that the effort required to make a change might better be directed

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<sup>26/</sup> Lea, op. cit., July 18, 1947: A3622-3; Wechsler, op. cit.

<sup>27/</sup> See page 94, post.

elsewhere, make this method of handling the problem impractical--possibly undesirable. The risks which direct election would introduce into the Presidential election process have been listed above. It is not plain that the advantages of direct election would outweigh the possible undesirable effects of the change.

It would perhaps be particularly unfortunate to set an unessential precedent for altering Constitutional provisions dealing with the Presidential election process. Experience in France and Italy has shown how electoral reform might come to be "manipulated" with the various parties competing for the system under which they were most likely to win.

13. Because small States are more homogenous they tend to give a large majority to one party or the other. The larger States, on the other hand, tend to be more evenly divided which gives organized "swing groups" an extraordinary influence on presidential elections which they would not have otherwise.

14. Ideological minorities, presently of little note, would under the direct election method, have the same weight as sectional minorities, thereby reducing the opportunities for sections of the country to unite to help solve mutual problems by putting pressure on presidential candidates.

15. The runoff provision embodied in most direct election proposals gives extremists from both sides a hope presently denied them by the Electoral College system of winner take all, that by bargaining prior to the runoff to be able to exert some leverage in the final choice of President.

28/

### District Plan

As has been pointed out above, the District Plan would preserve the Electoral College, but would eliminate the present procedure of giving a State's entire electoral vote to one candidate. Electors, equivalent to the number of Representatives in Congress of each State would be chosen by the voters, one for each Congressional or other district, and in addition, two (equivalent to the State's two Senators) for each State at large. Each candidate for elector would be required to declare the persons for whom he would vote for President and Vice President and the declaration would be binding, thus, in effect, eliminating the independent elector. These electors in each State would meet and vote and the tallies for all persons voted for sent to the President of the Senate. The candidate receiving the highest number of the total votes from all States and the District

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28/ Kallenbach, op. cit. (1949); Lea, op. cit., July 18, 1947; A3622-3; Ogg and Ray, op. cit.; U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit.; Wechsler, op. cit. Wilmerding, Lucius, Jr. Reform of the electoral system. Political Science Quarterly (New York), V. 64, March 1949: 1-23.

of Columbia would be elected providing he had a majority. Failing a majority the Senate and the House, meeting jointly, would elect a President from the top 3 candidates.

The proposal would thus eliminate the unit-rule system, the independent elector, and the method of voting by States in the House of Representatives should no candidate for President receive a majority of the electoral college vote.

Casting of electoral votes by district would not be new in the United States. When State legislatures began in the late 1700's and early 1800's to provide for popular choice of Presidential electors, it was normal for electors to be chosen in districts similar to Congressional districts. James Madison has been quoted as saying that the district system was the one "mostly, if not exclusively, in view when the Constitution was formed and adopted." As has been noted earlier in this report, the district method was generally abandoned when dominant parties in State legislatures saw that they could win more votes for their candidates by choosing electors on general, State-wide tickets.

The district system was favored in some form by such statesmen as James Madison, Thomas Jefferson, John Quincy Adams, Thomas Hart Benton, Andrew Jackson, Martin Van Buren and Daniel Webster. Four times between 1813 and 1824 constitutional amendments containing varieties of the district system were passed by the Senate.

The House voted on district plans, the last occasion being 1826, but none received the necessary two-thirds vote.

If electoral votes had been counted on the district system, i.e., Congressional districts, in Presidential elections from 1916 to 1968, the results would have differed from those under the existing system as follows.

<u>Election</u>	<u>Under the Existing System</u>			<u>Under the District System</u>			
	<u>Dem.</u>	<u>Rep.</u>	<u>Other</u>	<u>Dem.</u>	<u>Rep.</u>	<u>Other</u>	<u>Uncertain</u>
1968	191	302	45	192	289	57	<u>29/</u>
1964	486	52	0	466	72	0	<u>30/</u>
1960	303	219	15	254	280	3	<u>31/</u>
1956	74	457	0	116	413	2	
1952	89	442	0	156	374	0	
1948	303	189	39	299	193	39	0
1944	432	99	0	284	163	0	84
1940	449	82	0	311	135	0	85
1936	523	8	0	412	41	0	78
1932	472	59	0	363	85	0	83
1928	87	444	0	104	349	0	78
1924	136	382	13	145	291	15	80
1920	127	404	0	129	311	0	91
1916	277	254	0	267	175	0	89

29/ Washington Evening Star, November 25, 1968.

30/ Computed from Congressional Quarterly Almanac, Vol. XX, 1964, p. 1023.

31/ 1963 Senate Hearings, op. cit., p. 110.

Since 1947 the following amendments to the Constitution containing the District Plan have been proposed:

81st Congress (1949-1950) - Such a plan was introduced by Rep. Coudert of New York in 1949 (H. J. Res. 192); and again in greater detail, in 1950 (H. J. Res. 414).

82nd Congress (1951-1952) - Such a plan was again proposed by Rep. Coudert in 1951 (H. J. Res. 11).

83rd Congress (1953-1954) - In 1953, bills incorporating such proposals were introduced: S. J. Res. 95, Sen. Mundt; S. J. Res. 100, Sen. Smith of New Jersey; H. J. Res. 1 and H. J. Res. 19, Rep. Coudert; H. J. Res. 99, Rep. Machrowicz.

84th Congress (1955-1956) - S. J. Res. 3, Senators Mundt, Dirksen, and Goldwater; S. J. Res. 59, Sen. Smith of New Jersey; S. J. Res. 173, Sen. Mundt; H. J. Res. 4, H. J. Res. 192, Rep. Coudert.

This plan, as embodied in S. J. Res. 3 and H. J. Res. 4, became known as the Mundt-Coudert Plan (102 Cong. Rec. 5173). It provided for the election from each congressional district of the electors equivalent to the number of a State's Congressmen and for the election of two electors at large. A majority of the total electoral college vote country-wide would be necessary for the election of a President. Failing this, the Senate and House, meeting jointly, would select from the persons having the three highest number of electoral votes.

Rep. Coudert also introduced H. J. Res. 192, which proposed to abolish the Electoral College, while retaining other provisions of the District Plan. It proposed that the person receiving a plurality of the votes cast for President in each Congressional district within a State would be credited with one electoral vote. The person receiving the plurality of popular votes in the State would be credited with the number of electoral votes equal to the number of Senators and Representatives-at-large to which that State was entitled. The person receiving a majority of the total number of electoral votes in the country would be elected President. In other respects it retained the provisions of the Mundt-Coudert District Plan.

S. J. Res. 173, also introduced by Senator Mundt replaced the requirement of Congressional districts with districts of substantially equal population and compact and contiguous.

85th Congress (1957-1958) - S. J. Res. 4, Sen. Mundt; S. J. Res. 113, Senators Mundt and Thurmond; H. J. Res. 27, H. J. Res. 386, Rep. Coudert; H. J. Res. 262, Rep. Alger.

86th Congress (1959-1960) - S. J. Res. 12, Sen. Mundt; H. J. Res. 15, Rep. McSween; H. J. Res. 194, Rep. Whitten.

87th Congress (1961-1962) - S. J. Res. 12, Sen. Mundt and others, reported to full Senate Judiciary Committee from Subcommittee on Constitutional Amendments; H. J. Res. 54, Rep. McSween; H. J. Res. 125, Rep. Matthews; H. J. Res. 175, Rep. Seely.Brown; H. J. Res. 200, Rep. Whitten; H. J. Res. 665, Rep. Abbitt.

88th Congress (1963-1964) - S. J. Res. 12, Sen. Mundt and others; H. J. Res. 72, Rep. Abernethy; H. J. Res. 97, Rep. Matthews; H. J. Res. 158, Rep. Whitten; H. J. Res. 232, Rep. Quie; H. J. Res. 246, Rep. Skubitz.

The version of S. J. Res. 12 introduced in the 88th Congress contained a provision binding electors.

89th Congress (1965-1966) - S. J. Res. 12, Sen. Mundt and others; S. J. Res. 62, Sen. Tower; H. J. Res. 27, Rep. Abernethy; H. J. Res. 237, Rep. Quie; H. J. Res. 229, Rep. Whitten; S. J. Res. 141, Senator Scott.

Action

These resolutions were referred to the appropriate committees. The Senate Subcommittee on Constitutional Amendments reported to the full Senate Judiciary Committee S. J. Res. 12 of the 88th Congress and S. J. Res. 27 (a proportional plan proposal) without recommendation as to either, as possible alternatives for consideration.

On February 28, March 1, 2, 7-10, 1966, the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary held hearings on the proposed changes. No measure was reported from the Committee.

90th Congress

S. J. Res. 12, Senators Mundt, Cotton, Curtis, Dominick, Fong, Hruska, Jordan of Idaho, Morton, Stennis, Thurmond, and Tower -

This would provide for the election, in each State, of two electors-at-large, and the rest from single-elector districts, compact, contiguous and of nearly similar populations. It would bind each elector to the candidates for President and Vice President declared by him to be his preference.

It would leave qualifications of voters to the States but authorize them to enact lesser qualifications with respect to residence (for new residents).

A majority of the total electoral votes from the country would be required for election to President and Vice President. Failing receipt of such by any candidate, the Senate and the House, meeting jointly would choose the President (or Vice President) from the three candidates with the highest numbers of electoral votes. A majority would be necessary for election by Congress.

It would authorize the Congress to provide by law for the case of the death of any of the three candidates.

It would prescribe for electors in the District of Columbia the same binding requirements for electors in the States.

H. J. Res. 7, Rep. Abernethy, is similar to S. J. Res. 12 (supra).

S. J. Res. 55, Senator Cotton -

Similar in substance to much of S. J. Res. 12, but differs in the following areas:

S. J. Res. 12 provides for the appointment of the electors equal to the number of a State's Representatives in Congress, from districts of nearly equal population that are composed of compact and contiguous territory. S. J. Res. 55 provides for the appointment (election) of such electors from Congressional districts.

S. J. Res. 55 also contains a provision that Congress may provide by law for the case of the death of any person, who, except for his death, would have become President-elect or Vice President-elect, a provision not contained in S. J. Res. 12.

H. J. Res. 8, Rep. Abernethy -

Similar to S. J. Res. 12, but with the following differences:

H. J. Res. 8 does not include the District of Columbia.

It does not require electors to pledge to vote for specific candidates for President and Vice President.

It does not contain a provision permitting States to prescribe reduced residence requirements for voting for electors for President and Vice President.

It does not contain a provision authorizing electors to fill vacancies in their number as directed by the State legislature.

S. J. Res. 86, Senator Gruening -

Provides for the selection of presidential electors from the respective congressional districts in each State and the selection of two electors-at-large from each State. Provision is made for the selection of electors from the District of Columbia as Congress may direct.

Electors shall be residents of the States and/or of the congressional district from which elected. Each candidate for elector shall be pledged to the two persons joined together for whom he will vote for President and Vice President. In the event of inability to act of any elector prior to completing his duties of office, a substitute, designated by a standing committee of seven established for that purpose by the State legislature, shall honor his pledge.

In the event of the death of any candidate for President or Vice President during the election campaign, substitutions shall be promptly made by a committee of seven established for that purpose by the convention at which they were nominated.

Voters shall have the qualifications requisite for voters of the most numerous branch of the State legislature.

Provisions for voting by the presidential electors and counting of the votes in Congress are substantially similar to existing provisions, except that the candidates for President and Vice President, joined together, receiving the greatest number of votes, shall be the President and Vice President.

If two pairs of candidates are tied, the President of the Senate shall select between them by lot.

H. J. Res. 583, Rep. Snyder, and H. J. Res. 584, Rep. Whitten, are similar to S. J. Res. 86, except that if two pairs of candidates are tied for the highest number of electoral votes cast, the pair receiving the votes of the highest number of congressional districts shall be the President and Vice President.

S. J. Res. 25, Senator Scott -

Provides for the abolition of electors but retains the electoral vote system and provides for awarding two electoral votes from each State to the candidate receiving the greatest number of votes therein and a single electoral vote to the candidate carrying each congressional district within a State. Where a State elects representatives at-large, electoral votes shall be given to the Presidential candidate carrying the State equal in number to the number of such Representatives. Congress shall establish voting districts within the District of Columbia equal to the number of electoral votes which it is entitled to cast. Candidates carrying each district shall secure the electoral vote thereof.

Voters shall cast one ballot for President and Vice President.

A majority of the electoral votes shall be necessary for election to President and Vice President; failing such the choice shall be made from the persons having the three highest numbers of electoral votes by the Senate and House meeting jointly, with each Member having one vote, a majority being necessary for the selection.

Congress may by law provide for the case of the death of any of the persons from whom the Congress might make a choice, and in case of the death of any person who, except for his death, would have become President-elect or Vice President-elect.

H. J. Res. 143, Rep. Whitten -

Provides for election in each State of two electors-at-large and the remainder from compact, contiguous districts of nearly equal population. Should a State fail to establish such districts, the amendment authorizes Congress to create them upon receipt of a petition from not less than one-fifth of the members of the legislature of such State.

Requires a majority of electoral votes to be elected President and Vice President and failing receipt of this provides for election by the Senate and House, meeting jointly, from the three candidates with the highest electoral vote. A majority would be necessary for election by Congress.

Action.

Hearings on the Senate joint resolutions were held by the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, on May 16, 17, July 12, 13, 14, 18, 19, 20, 25, and August 23, 1967.

91st Congress

S. J. Res. 12, Mr. Mundt for himself, Mr. Boggs, Mr. Byrd of West Virginia, Mr. Cotton, Mr. Curtis, Mr. Dominick, Mr. Fong, Mr. Goldwater, Mr. Hansen, Mr. Hruska, Mr. Jordan of Idaho, Mr. Miller, Mr. Sparkman, Mr. Stennis, Mr. Thurmond, Mr. Tower, Mr. Williams of Delaware, and Mr. Young of North Dakota -

Provides that each State choose a number of presidential electors equal to the whole number of State congressional Representatives. Prohibits any person holding an office of trust or profit under the United States from being an elector.

Electors assigned to each State with its Senators are elected at large. Electors apportioned with Representatives are elected by the people of a single member district created by the State. Such electoral districts are to be compact and of substantially equal numbers of inhabitants, and may be altered only after a general census. Candidates for the office of elector file under oath the names of the presidential and vice presidential candidates for whom they will vote. Such oath is binding on any successor.

Electors vote by signed ballots for President and Vice President, one of whom must be from another State. In this ballot is given their presidential vote and in another ballot their vice presidential vote. Electors also make a list of all persons voted for such offices, the number of votes for each person, and the name and electoral district, if any, of each elector with his vote. These lists are then transmitted to the President of the Senate who, in the presence of the Senate and the House of Representatives, counts the votes.

The persons receiving the most votes for each office shall be declared elected President and Vice President. Provided that such number is a majority of the electors chosen. In the event of a tie the person having the greatest number of votes cast by electors from electoral districts shall be declared elected. If no presidential candidate has a majority then the Senate and the House of Representatives, each member having one vote shall choose from among the three highest candidates. Three-fourths is necessary for a quorum but a majority of the whole is required to elect. If more than one ballot is required then the second ballot is between the two highest candidates.

The Vice President is chosen in the same manner if no majority is received in the first instance.

Provides Congress with the power to enforce with appropriate legislation and to determine questions concerning breach of faith by electors in voting, and for the case of the death of any candidate when the selection devolves on the Congress.

Supercedes paragraphs 2 and 3 of section 1, article II of the Constitution, the 12th Amendment and section 4 of the 20th Amendment.

Electors chosen pursuant to the 23rd Amendment for the District of Columbia are selected in a manner determined by Congress, and have the same status and obligations as other electors.

S. J. Res. 25, Mr. Scott -

Provides for the selection of the President and Vice President by electors from the States and the District of Columbia.

Permits each to cast a number of electoral votes equal to the number of Senators and Representatives to which the State is entitled and gives the District electoral votes under the 23rd Amendment.

The number of electoral votes a candidate receives is determined by a general election for President and Vice President. Voters must have the qualifications necessary for persons voting for members of the most numerous branch of the State legislature.

The two electoral votes representing the State's Senators are given to the candidate receiving the highest number of votes in the State for that office. A vote is given for each congressional

district won. If representatives are chosen at large then electoral votes representing these are given to the candidate receiving the greatest number of votes for that office in the State.

The electoral votes of the District of Columbia are given in accordance with an election held in a manner that Congress shall direct. Congress establishes within the District electoral districts equal to the District's number of electoral votes. The electoral votes are given to the candidates who receive the highest vote in each district.

The time of the election in the States and the District shall be uniform. Unless altered by Congress, such election will be held on the Tuesday next after the first Monday in November. Each voter casts one ballot for both President and Vice President.

Within 45 days after the election, unless Congress provides otherwise the returns shall be certified and transmitted to the President of the Senate. On January 6 unless Congress appoints a different date, not earlier than January 4 and not later than January 10, the votes are counted.

The persons receiving the greatest number of votes shall be declared elected if such number be a majority of the number of electoral votes cast.

If no person receives a majority of votes for the office of President or Vice President, then the Senate and House of Representatives

assembled and voting individually shall choose from among the candidates for each office the three highest candidates. A quorum shall consist of three-fourths and a majority shall be necessary to elect. If additional ballots are necessary on the fifth ballot, the choice shall be between the two highest candidates on the fourth candidate.

Congress may provide for the case of the death of any candidate from whom the Senate and House of Representatives may choose when the choice devolves on them and for the case of the death of a candidate who but for his death would have become President-elect or Vice President-elect.

Supercedes the 2nd, 3rd, 4th, paragraphs of section 1, article II, of the Constitution, the 12th Amendment and section 4 of the 20th Amendment to the Constitution. Does not supercede the 23rd Amendment except where expressly provided.

S. J. Res. 71, Mr. Curtis -

Similar to S. J. Res. 12, 90th Congress, but provides for election by the greatest number of electoral votes rather than requiring a majority.

H. J. Res. 90, Mr. Snyder -

Similar to H. J. Res. 583, 90th Congress.

H. J. Res. 104, Mr. Abernethy -

Similar to S. J. Res. 12, 90th Congress.

H. J. Res. 108, Mr. Abernethy -

Similar to H. J. Res. 8, 90th Congress.

H. J. Res. 312, Mr. Derwinski -

Similar to S. J. Res. 12, 91st Congress.

H. J. Res. 313, Mr. Dowdy -

Similar to H. J. Res. 8, 90th Congress but provides for listing the elector and vote in the election returns and provides that in case of a tie that the pair of candidates having the greatest number of votes cast by electors chosen from electoral districts shall be declared elected.

Provides that if additional ballots are necessary in an election by the Congress then the 2nd ballot shall be between the two highest pairs of candidates that were on the 1st ballot and provides for the District of Columbia electors to be chosen in a manner provided for by Congress.

H. J. Res. 347, Mr. Meskill -

Vests the executive power in the President and provides for 4 year terms for both the President and Vice President.

Each State chooses, in places and manner determined by the State, a number of electors equal to the number of Senators and Representatives of the State in the Congress. Prohibits any person holding a U. S. office of trust or profit from being an elector.

Provides for the selection of two electors at large and a number of electors equal to the number of the State's Representatives in the Congress elected by voters eligible to vote for such Representatives on an individual basis.

Does not affect the manner of appointing electors from the District of Columbia.

Congress provides for a manner of pledging electors to a particular presidential and vice presidential candidate.

If an elector violates such pledge then his vote is given to the candidate for whom the elector was pledged.

Congress prescribes for the case of a candidate who has died prior or withdrawn the casting of electoral votes.

If no candidate receives a majority of the electoral votes, then selection is made between the two highest candidates by giving the electoral votes of the eliminated candidate to the one remaining who had received the next highest vote in the District, State, or District of Columbia from which the elector pledged to the eliminated candidate was elected.

Provides for enabling 18 year olds to vote in primaries and elections for President and Vice President, Senator and Representative in Congress.

Gives Congress power to enforce by appropriate legislation.

H. J. Res. 357, Mr. Adair -

Similar to S. J. Res. 25, 91st Congress.

H. J. Res. 401, Mr. McCulloch -

Abolishes the office of elector. Provides that the President and Vice President be elected by electoral votes cast by the States and the District of Columbia.

Each State casts a number of electoral votes equal to its representation in Congress. The District is given the number of votes it would have if it were a State but not more than the least populous State.

The two electoral votes chosen at large are given to the pair of candidates that carries the State and the remainder go on the basis of the pair of candidates that carried each District. The electoral vote of the District goes to the pair of candidates that receives a plurality. Congress provides for any case of a tie.

States may establish voter qualifications. Congress may provide for uniform residence and age qualifications.

A majority of electoral votes is necessary to elect. If no majority is given any candidate, then the Senate and the House of Representatives voting as individual members select by ballot from the two with the highest votes.

Congress is to provide for the date, place and manner in which votes cast in such election are to be ascertained and counted.

H. J. Res. 403, Mr. Mills -

Similar to H. J. Res. 583, 90th Congress.

H. J. Res. 405, Mr. Pollock -

Provides for the election of a "presidential candidacy" consisting of a President and Vice President. Requires that such candidates shall have consented to the joining of their names.

Each State is to have a number of electoral votes equal to the number of its Senators and Representatives in the Congress. The District is entitled to a number of electors as if it were a State but not more than the least populous State.

States are to prescribe the place and manner of such election except that any presidential candidacy which qualifies to appear on the ballot in two-thirds of the States not later than 45 days prior to the election shall appear on the ballots of all States and the District.

State legislatures are to divide the State into electoral districts equal to its number of Representatives in Congress. Such Representatives are to be elected from these Districts.

The presidential candidacy that receives the greatest number of votes in a State receives two electoral votes and the candidacy that receives the most votes in an electoral district receives the vote of that district.

Returns are transmitted to the President of the Senate. If no candidacy receives at least 45 percent of the vote then a

runoff election is held in the same manner as the general election between the two candidacies that received the highest number of electoral votes. In the runoff the candidacy that receives the greatest number of electoral votes shall be declared elected.

H. J. Res. 430, Mr. Waggonner -

Provides that if States chose to select presidential electors by election that they shall chosen in the following manner.

Electors granted because of a State's Senators in Congress are elected by those eligible to vote for such Senators, and electors representing any State's member of the House of Representatives are elected by those eligible to vote for such Representative.

States entitled to more than one Representative are divided into a number of electoral districts equal to the number of Representatives in Congress it has. States are to provide for the election of electors from such Districts.

If no candidate receives a majority of the electoral vote the Members of the Senate and the House of Representatives vote, each State having one vote, for the candidates. A majority is necessary to elect.

Congress may provide by law for the case of the death of any persons from whom it may choose a President or Vice President when such choice has devolved upon them.

H. J. Res. 440, Mr. Collier -

Similar to S. J. Res. 12, 91st Congress but provides for electors to be elected from congressional districts. Does not however provide for a case of a tie and in the event of no candidate receiving a majority does not limit the balloting in Congress to the top three candidates but permits voting in the Congress for any candidate that has carried at least three states.

H. J. Res. 478, Mr. Whitten -

Similar to H. J. Res. 143, 90th Congress.

H. J. Res. 517, Mr. Skubitz -

Similar to H. J. Res. 12, 90th Congress.

H. J. Res. 545, Mr. Rogers of Florida -

Vests the executive power in the President.

Provides for the election of the President by the people of the states and the District of Columbia. The states are to establish their voter qualifications and the Congress establishes the voter qualifications for the District. The election is to be held on a uniform day at a time to be determined by Congress. The returns of such election are then transmitted to the President of the Senate.

Each state receives a number of electoral votes equal to its representation in both Houses of Congress. The District receives

electoral votes as if it were a State but no more than the least populous State.

The candidate receiving the greatest number of votes in a State receives two electoral votes of the State. The candidate receiving the greatest number of votes in the District receives the electoral votes of the District.

The candidate receiving the greatest number of votes in a Congressional district receives one electoral vote.

A majority of electoral votes is required to elect. If no majority is received then the Senate and the House of Representatives selects from the two highest candidates. Each member has one vote.

Congress provides for procedures in case of the death or withdrawal of a candidate on or before an election and must make provision for a tie.

Repeals the first four paragraphs of section 1, article II of the Constitution, section 4 of the 20th Amendment, the 12th Amendment and the 23rd Amendment.

H. J. Res. 680, Mr. Lennon -

Vests the executive power in the President.

Abolishes the office of elector as presently constructed.

Provides that the President and Vice President be elected by the people of the States and the District of Columbia, and that such voters in

the State have qualifications requisite for voters of the most numerous branch of the State legislature, but permits States to provide lower residence requirements. Congress prescribes the regulations for the election in the District of Columbia. States establish the places and manner of holding the election but Congress may alter such regulations.

The election is held on a uniform day throughout the United States which, unless Congress determines otherwise, will be the Tuesday next after the first Monday in November.

Provides that each State is entitled to a number of electoral votes equal to its representation in the Congress. The District is also represented but its electoral votes may not exceed those of the least populous State.

Within 45 days after the election the returns are sent to the President of the Senate. On the 6th day of January, unless Congress appoints a different day not earlier than the 4th of January and not later than the 10th of January, the votes shall be counted in the presence of the Senate and the House of Representatives.

The person receiving the greatest number of votes in a State shall receive two electoral votes and any other electoral votes representing Representatives chosen at large, and the candidate receiving the greatest number of votes in a Congressional district shall receive

the electoral vote of that district. The candidate that receives the greatest number of votes shall be declared elected President.

In the event of a tie the members of the Senate and House of Representatives, with each member having one vote, shall select the winner by a majority vote.

The Vice President is elected in the same manner.

Empowers Congress to provide for the case of the death of any persons from whom they may choose a President or Vice President whenever the right of choice shall have devolved upon them.

Provides Congress with the power to enforce the article with appropriate legislation.

H. J. Res. 791, Mr. Dowdy for himself and Mr. Dennis -

Provides for the election of the President and the Vice President by the people of the States and the District of Columbia. Each voter casts a vote for a presidential candidacy consisting of both the President and the Vice President. Candidates must consent to the joining of their names and may not both be residents of the same State or both from the District.

Each State receives a number of electoral votes equal to its representation in the Congress. In allotting votes the District is treated as a State but may not receive more votes than the least populous State.

Each State establishes a number of electoral districts equal to the number of Congressional representatives to which it is entitled. Such Districts are to be compact and contiguous, and of approximately equal population. These are reapportioned after each census.

The candidacy that receives the largest number of votes in a State or the District receives two votes from that State. For each electoral district carried by a plurality the candidacy receives one electoral vote.

Within 45 days after the election the complete returns are transmitted to the President of the Senate. Between January 3 and January 20, as Congress may provide, the votes shall be counted and the candidacy receiving a majority of the electoral votes shall be declared elected. If no candidacy receives a majority, then the members of Congress each having one vote select from the three highest candidacies and if no candidacy receives a majority, then the second ballot is between the two highest candidacies.

States are to prescribe the place and manner of holding their election and Congress makes such regulations for the District. The election is held on a uniform day throughout the country, such day to be determined by Congress.

State voter qualifications are necessary for electors of the most numerous branch of the State legislature, but States may

adopt less restrictive residence requirements. Congress prescribes voter qualifications for the District.

Congress may enforce by appropriate legislation the provisions of this article and may provide for the death, disability, or withdrawal of a candidate on or before the election; a tie in the popular vote or the death of both the President-elect and Vice President-elect.

H. J. Res. 897, Mr. Dowdy for himself, Mr. Poff, and Mr. Dennis -

Similar to H. J. Res. 791, but provides for selection by Congress between the two highest candidates in the event no pair of candidates receives a majority of the electoral votes.

Action

The above resolutions were referred to the appropriate committee, but to date have received no action.

Arguments in Favor of District Plan <sup>32/</sup> (Note: the pro and con arguments that follow relate to the district system as proposed in S. J. Res. 12, 89th Congress, and S. J. Res. 12, 90th

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32/ Krock, Arthur. Electoral system reform is long overdue. New York Times (New York), Dec. 18, 1952: 28; --Good uses imputed to the landslide delusion? New York Times (New York), Dec. 26, 1952: 14; --A substitute for the Lodge-Gossett plan. New York Times (New York), Feb. 9, 1950: 28; Lippman, op. cit.; Williams, J. Harvie. Electoral college reform. In U. S. Congress. Senate. Committee on the Judiciary. Nomination and election of president and vice-president. Hearings on S. J. Res. 8 and related bills, June 11, July 13, 15, and Aug. 1, 1953. 83rd Cong., 1st session. Washington, U. S. Govt. Print. Off., 1953. pp. 209-225; --Electoral reform; the Coudert amendment. Article

Congress). Those who favor the district plan argue along the following lines:

1. Under the district system, popular vote results would tend to be reflected more accurately in electoral vote results than they are under the present system. Generally speaking, any group of voters capable of electing a Representative to Congress would be able to win electoral votes. Electoral vote results would not be distorted--and the majority of the winner exaggerated--by the practice of awarding all the electoral votes of a State to the party winning a plurality of popular votes. The proposal would eliminate the unit-rule or "winner take all" system in each State. In at least twelve of the thirteen Presidential elections between 1916 and 1964 (see table above), the district system would have reduced the electoral majority of the winning candidate and increased the electoral votes of his opponent. In one instance (1960) it would have changed the result of the election.

Under most circumstances the district system would prevent the election of "minority Presidents." To the extent that popular

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inserted in the Record by Frederic R. Coudert, Jr., Congressional Record, Jan. 9, 1953: A75-77; Wilmerding, op. cit. Congressional Digest April 1956: 122-128 for pro-con. See also 1961 Hearings, Senate, op. cit.; 1963 Hearings, Senate, op. cit.; 1961 Committee Print, Senate, op. cit.; Electoral College Reform, Chamber of Commerce of the United States, Sept. 1963; Remarks by Senator Mundt, Congressional Record, Vol. 110, pp. 15318-15320, June 29, 1964, Daily Congressional Record, February 28, 1966, pp. 4082-4085; Senators Mundt and Stennis, Daily Congressional Record, Jan. 7, 1965, pp. 396-397; Felix Morley, Action as Needed to Preserve Election Stability, Nation's Business, Dec. 1963, p. 29; --Time for Election Reform is Now, Nation's Business, Dec. 1964, p. 25; American Good Government Society, Congressional Digest, November, 1967, pp. 279, 283.

strength was reflected in electoral votes, the possibility of a wide disparity between popular and electoral votes would be reduced. A large popular majority in a State would not be "wasted." The winner of a bare plurality would not "take all."

In addition, the requirement that districts be "composed of compact and contiguous territory, containing as nearly as practicable the number of persons which entitled the State to one Representative in Congress" would virtually eliminate malapportionment among districts and reflect more accurately popular will. Equal weight, based on population, would be given to urban and rural districts.

Furthermore, under the district system each voter would vote for only three electors rather than for all of the electors in his State as under the unit-rule. There would be less difference in the value of each voter's vote among States.

The district system would limit the possible electoral effects of local frauds, bad weather, intense local issues, and other accidental circumstances.

Similarly to proposals for proportionate distribution, the district plan would preserve the present provision for relating electoral votes to population; the total electoral strength of a State would not vary with the relative size of the popular vote. The plan would provide an even more effective limitation of the effects of local frauds, etc., than would proportionate distribution of

electoral votes. Under the district system, unusual circumstances in one local area could only determine the disposition of the electoral votes for the district and the State at-large. With proportionate distribution, it would be possible for such circumstances to affect the total vote of the State.

By eliminating the unit-rule, the proposal would consequently save large blocs of voters in a State from being disfranchised for having amassed a total statewide vote for a candidate less than that of the winner.

2. The district system would be more favorable than the present method of election to the establishment and maintenance of the two-party system. In any areas of a so-called "one-party" State which are now sometimes represented in Congress by members of another party, that other party would be encouraged by the district amendment to seek electoral votes for its Presidential candidate. The district plan would not be likely to encourage any undue growth of third or splinter parties. In order to win any electoral votes, the supporters of a third party would have to carry separate Congressional districts. A third party would have little hope of diverting more than a few electoral votes from major party candidates. The district plan would not, as proportionate distribution would, give electoral votes to a minority group thinly scattered through a State.

3. The district system would provide greater protection for the political power of small and sparsely populated States and

areas. It would reduce the power of large, "doubtful" States to exert excessive political influences. With the possibility of dividing the electoral votes, it would be less important than it is now for a Presidential candidate to come from one of these "key" States. It would be less likely that the "pivotal" States would carry undue weight in the development of national party programs, or that they would claim disproportionate attention during the campaign.

The district system would place a check on the political power of large cities, and especially of certain pressure groups within those cities. The voters in the cities would not be able to control all the electoral votes in a State. At most they could determine their own electoral vote and the few electoral votes cast by the State as a whole (for Senators and Representatives-at-large).

Alleged undue influence of minorities in urban areas in large States would be reduced.

Small or sparsely populated States would not be deprived of the advantage they now possess in the distribution of electoral votes. Each State would continue to receive two of its electoral votes regardless of the size of its population.

The district system would diminish the excessive political importance of larger, doubtful states, and would encourage major parties to select candidates and seek electoral votes elsewhere throughout the country.

4. The district system would tend to equate the political pressures on the President with those felt by Congress. Votes would be cast for President and Vice-President and for Members of Congress by the same voters in the same district at the same time. The main difference would be that electoral votes would be cast in a body and one-third of the Senate would be chosen at that time. Responsibility to virtually identical constituencies might foster harmony between the President and Congress.

5. By preserving the electors, the district system would not involve any unpopular threat to the role of States in the Presidential election or to State control over voting qualifications. The present power of the States to set standards for voting would not be disturbed. The only change authorized would be a positive one, the incorporation into the Federal Constitution of a provision permitting States, at their discretion, to reduce residence requirements for voting, by new residents, in the Presidential elections.

6. The district amendment would not create any unwanted precedent for proportional representation in Congress. It is unlikely that any party unable to elect representatives to Congress would be capable of winning electoral votes. Electoral votes would be mathematically proportionate to popular votes only if popular votes happened by chance to be distributed among districts in such a way as to produce that result.

7. The requirement of compact, contiguous districts of nearly equal population need not, under the developing state of the law, necessarily result in the creation of electoral districts different from congressional districts. With the Supreme Court decision in Wesberry v. Sanders, 376 U.S. 1 (1964), congressional districts within a State are now required to be substantially equal in population. In 1965, the House of Representatives passed H. R. 5505, a bill requiring congressional districts to be compact, contiguous and to vary not more than 15 percent in population from the average district in the State. The bill was not enacted by Congress. In any event, if such an act is passed, S. J. Res. 12 could be amended back to its original form so that electoral districts would be the same as congressional districts. The advancing state of the law is eliminating malapportionment (and possibly gerrymandering) of congressional districts.

8. By, in effect, binding the electors, the proposal would eliminate criticism directed at the current system. Bound electors, unable to be independent, would accurately reflect the popular will. Only if the candidate dies before the electors meet would an elector be free to vote for someone else.

9. By establishing a uniform system the proposal would eliminate State control over the method of choosing electors and prevent possible manipulation from election to election.

10. The district system might well provide an incentive for greater voting participation in States now dominated by a single party. Any invigoration of the two-party system in those States would help, as would the fact that minority votes would not necessarily be wasted.

Arguments against District Plan. <sup>33/</sup> Those who oppose the district plan claim that:

1. Election of the President by the district system would not invariably reflect popular vote results more accurately than the present system. The relationship between popular votes and electoral votes would depend partly on the geographic distribution of party strength. A minority without concentrated power in certain districts might not win any electoral votes in a State. In a national sense, as long as the electoral college system remains and each State has at least three electoral votes regardless of population, distortion will be built into the system. In addition, although each voter in

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33/ Statements on H. J. Res. 11 and H. J. Res. 19 (82nd Congress, 1st session). In U. S. Congress. Senate. Committee on the Judiciary. Hearings on S. J. Res. 8 and related bills, op. cit., pp. 230-254; Senate Judiciary Committee, Committee Print, 1961, op. cit.; Electoral College Reform, Chamber of Commerce of the United States, Sept. 1963; Report on the Method of Electing the President and Vice President, by Committee on Federal Legislation, Assn. of the Bar, City of New York, Dec. 1961; Sen. Estes Kefauver, The Electoral College: Old Reforms Take On a New Look, 27 Law and Contemporary Problems, 188, Spring, 1962; Allan P. Sindler, Presidential Election Methods and Urban-Ethnic Interests, 27 Law and Contemporary Problems, 213, Spring 1962.

each district throughout the country would only vote for three electors, population disparities among States would reduce the value of a vote for statewide electors in large States as compared to States with lesser populations.

The district system would not abolish the inequalities produced by the present weighting of electoral votes in favor of small States. The weight of popular votes in small States would continue to exceed the weight of such votes in large States.

The district plan would continue to permit the election of some "minority" Presidents. This would be possible if the winning candidate won most of his electoral votes by bare majorities or pluralities, while his main opponent received large numbers of his votes by huge margins. As with proportionate distribution, it might happen also if the winner drew disproportionate support from low-population States where there were fewer voters for each electoral vote. Where one Presidential candidate won the bulk of his votes in low-population (rural or small town) districts, the chances of a minority winner might be greater than they are now.\* Thus in 1948 the Democrats carried Ohio and California, but the district plan would probably have given the Republicans more electoral votes in those States.

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\* - See, Mr. Nixon, 1960, p. 79.

Several factors other than the unit-rule can contribute to the election of a minority President. These are: (a) the federal principle providing a minimum of three electoral votes for each State, and (b) the allocation of additional electors on the basis of population. The first factor causes 36 States (based on the 1960 census) to have greater weight in the presidential election than they would have had if electoral votes were awarded solely on population. Under the second factor the total popular vote in a State has no relevancy to its electoral votes. A small voter turnout will carry electoral votes based on population just as surely as a large voter turnout. And, under the district system a candidate could secure a majority of a State's electoral votes with a minority of its popular votes.

The district amendment would not diminish present inequities in State laws relating to voting qualifications (except for the permissive clause relating to voting by new residents). Like proportionate distribution, it would continue to permit States to restrict their suffrage without any loss of electoral power. The State would cast the same number of electoral votes regardless of the size of the popular vote.

2. The district system might tend to overweight the political power of rural and small-town areas. As a rule, less highly populated areas tend to be overrepresented in the apportionment of Congressional districts, while cities have less than their share of

seats (although this is being altered). It is possible that the district plan would permit a presidential candidate to win an election without the support of any of the major metropolitan areas. The district plan would reduce the influence of the big city vote in presidential elections, as well as reduce the influence of the vote of minority groups in the large States.

3. The district system might impair rather than strengthen the two-party system. It would not be likely to invigorate second parties in "one-party" States where the minority party has little chance of winning the votes of any Congressional districts. In the South, the Democratic party has been so generally dominant that few Republican Congressmen have been elected from those States. In the absence of a major realignment of parties in the South, it is doubtful that a change to the district system would materially alter the prospects of a second-party presidential candidate in that area.

In all probability, the district system would concentrate presidential campaigning to marginal districts.

The district plan would give greater recognition to possible undesirable third parties than the present system. Almost any small party would find it easier to win Congressional districts than to carry whole States. Once such parties won a few electoral votes, they might be encouraged to try for more in order to throw the election into Congress where greater bargaining opportunity might exist.

4. The system does not automatically convert the election of an individual elector into an electoral college vote. Votes by electors for persons other than those to whom they are pledged are not counted under S. J. Res. 12, but they would be lost to the pledged candidate. An elector, by voting for others, can reduce the total electoral votes of the candidate to whom he is pledged.

5. Adoption of the proposal might not necessarily abrogate the existence of two sets of separate districts in a State, electoral and congressional. Since the courts have not as yet considered the question of political gerrymandering of congressional districts as being prohibited by the Constitution, the possible consequence of a failure by Congress to enact a districting statute requiring congressional districts to be compact, would be to leave with the States a constitutional requirement of districts of equal population but which are not necessarily compact. The proposed constitutional amendment for election of electors from districts requires such districts to be compact. The result might be that while electoral districts in a State would be of equal population and compact, congressional districts could be of equal population but gerrymandered thus producing a situation of separate electoral and congressional districts within a State.

Proportional Plan

There were 11 proposals to incorporate some form of proportional plan in the 80th Congress, 10 in the 81st Congress, 13 in the 84th Congress, 7 in the 85th Congress, 9 in the 88th Congress, 11 in the 89th Congress, 10 in the 90th Congress, and 14 in the 91st Congress as of April 1, 1970.

The idea was first introduced by Representative Lawrence of New York in 1848.

As has already been stated, the Proportional Plan would abolish the Electoral College, but would retain the electoral vote. In each State, the electoral vote would be apportioned among the presidential candidates in accordance with the number of popular votes they receive, rather than in accordance with the "winner take all" system which we have at present. The candidate with the most electoral votes throughout the Nation would be elected President if he received a certain percentage (usually 40) of the total electoral vote. In case no person received at least 40 percent of the total electoral votes, the Senate and House sitting jointly would choose the President from the persons having the two highest numbers of electoral votes.

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1948 Election 34/

	<u>Present System</u>	<u>Proportionate Distribution</u>
Truman	303	258.0
Dewey	189	221.4
Thurmond	39	38.6
Wallace	0	9.4

1952 Election 35/

Eisenhower	442	288.5
Stevenson	89	239.8
Other	0	2.7

1956 Election 35a/

Eisenhower	457	296.683
Stevenson	74	227.224
Other	0	7.093

1960 Election 35b/

Kennedy	303	266.136
Nixon	219	263.662
Other	15	7.202

1964 Election 35c/ (approximate)

Johnson	486	313
Goldwater	52	218
Other	0	7

1968 Election 35d/

Nixon	302	234
Humphrey	191	224
Wallace	45	80

34/ Totals under proportionate distribution do not equal totals under the present plan because the table does not show fractional votes which would have gone to such minor candidates as the Socialists and others. For the effects in individual States, see Cong. Rec., Jan. 18, 1947:A250.

35/ For a State by State analysis, see Cong. Rec. [daily ed.] Feb. 20, 1953: 1346-7.

35a/ Hearings, 1963, op. cit., p. 110.

35b/ Hearings, 1963, op. cit., p. 110.

35c/ The 1964 proportionate distribution numbers are roughly approximate having been figured by rounding off to the nearest whole number percentages of State votes won by each candidate. More explicit percentage figures for each State can be found in Congressional Quarterly Almanac, Vol. XX, 1964, pp. 1024-1068.

35d/ Washington Evening Star, Nov. 25, 1968.

80th Congress (1947-1948) - S. J. Res. 200, Mr. Lodge; H. J. Res. 9, Rep. Gossett; H. J. Res. 21 and H. J. Res. 124, Rep. Lea; H. J. Res. 68 and H. J. Res. 69, Rep. Celler; H. J. Res. 107, H. J. Res. 108, Rep. Kefauver; H. J. Res. 230, Mr. Gearhart; H. J. Res. 436, Mr. Smathers.

Action. These bills were referred to the appropriate committees but received no further action from Congress.

81st Congress (1949-1950) - S. J. Res. 2, Sen. Lodge and others; H. J. Res. 2, Rep. Gossett; H. J. Res. 10, Rep. Cannon; H. J. Res. 11, Rep. Celler; H. J. Res. 51, Rep. Davis of Wisconsin; H. J. Res. 74, Rep. Smathers; H. J. Res. 78, Rep. Hays of Arkansas; H. J. Res. 81, Rep. Johnson; H. J. Res. 82, Rep. Priest; H. J. Res. 121, Rep. Boggs of Louisiana.

Action. S. J. Res. 2 and its companion bill H. J. Res. 2 became known as the Lodge-Gossett Plan.

H. J. Res. 2 (Rep. Gossett) was reported in the House (H. Rept. 1011, 81st Congress) on July 12, 1949, but received no further action.

S. J. Res. 2 (Sen. Lodge) was reported in the Senate (S. Rept. 602) on June 30, 1949. It passed the Senate as amended to substantially its present form on February 1, 1950, by a vote of 64-27 (96 Cong. Rec., p. 1278), and was referred to the House Committee on the Judiciary on February 2, 1950. The Resolution was

reported in the House on March 29, 1950 (H. Rept. 1858), and was debated on July 17, 1950 (96 Cong. Rec., July 17, 1950, pp. 10413-10428). A motion to suspend the rules and pass the bill was rejected by a vote of 134-210 (96 Cong. Rec., p. 10427).

As passed by the Senate, S. J. Res. 2 provided for a Constitutional Amendment to abolish the electoral college and to elect the President and Vice President at a general election. Each State should have a number of electoral votes equal to the number of Senators and Representatives to which it is entitled in Congress. Each candidate should be credited with such proportion of the electoral vote of each State as he received of the total popular vote therein, fractional numbers less than one-thousandth to be disregarded. If no person received at least 40 percent of the electoral vote for President, the two Houses of Congress in joint session should by majority vote choose the President from the persons having the two highest numbers of electoral votes.

82nd Congress. (1951-1952) - S. J. Res. 52, Sen. Lodge and others; H. J. Res. 14, Rep. Davis of Wisconsin; H. J. Res. 19, Rep. Gossett; H. J. Res. 89, Rep. Hays of Arkansas; H. J. Res. 90, Rep. Johnson; H. J. Res. 109, Rep. Boggs of Louisiana; H. R. 6137, Rep. Rains.

Action. S. J. Res. 52 (Sen. Lodge) was reported favorably in the Senate on July 30, 1951 (S. Rept. 594), but received no further

action. H.J. Res. 19 (Rep. Gossett) was reported favorably in the House on October 17, 1951 (H. Rept. 1199), but received no further action. These two resolutions constituted the same Lodge-Gossett Plan which passed the Senate in the 81st Congress.

83rd Congress (1953-1954) - S. J. Res. 8, Sen. Smathers; S. J. Res. 19, Sen. Kefauver; S. J. Res. 85, Sen. Smathers; S. J. Res. 118, Sen. Johnson of Colorado; S. J. Res. 152, Sen. Humphrey (like H. J. Res. 478 by Rep. MacGregor, 88th Congress); H. J. Res. 9, Rep. Bentsen; H. J. Res. 33, Rep. Fisher; H. J. Res. 63, Rep. Mason; H. J. Res. 67, Rep. Morano; H. J. Res. 80, Rep. Teague; H. J. Res. 92, Rep. Reed of Illinois; H. J. Res. 97, Rep. Davis of Wisconsin; H. J. Res. 170, Rep. Celler; H. R. 1600, Rep. Rains; H. J. Res. 586, Rep. Hiestand (would permit States to choose between proportional or district plans).

Action. These bills were referred to the appropriate committees but received no further action by Congress.

84th Congress (1955-1956) - S. J. Res. 9, Sen. Smathers; S. J. Res. 30, Sen. Kefauver; S. J. Res. 31, Sen. Daniel and others; H. R. 573, Rep. Rains; H. J. Res. 5, Rep. Davis of Wisconsin; H. J. Res. 11, Rep. Celler; H. J. Res. 39, Rep. Grant; H. J. Res. 97, Rep. Fisher; H. J. Res. 175, Rep. Reed of Illinois; H. J. Res. 176, Rep. Walter; H. J. Res. 204, Rep. Burnside; H. J. Res. 214, Rep. Johnson of California; H. J. Res. 242, Rep. Hays of Arkansas.

Action. S. J. Res. 31, introduced by Senator Daniel for himself and 19 other Senators, was reported favorably in the Senate on May 19, 1955 (S. Rept. 360). This plan known as the Original Daniel Plan, contained provisions similar to the Lodge-Gossett Plan, requiring 40 percent of the electoral vote for election of the President, failing which, Congress in joint session would choose a President, as in the Lodge-Gossett Plan, from the persons having the two highest numbers of electoral votes.

The Daniel Substitute Plan (Combination Plan) - In 1956 those who favored the District Plan and those who favored the Proportional Plan joined forces and offered an amendment to S. J. Res. 31, which was known as the Daniel Substitute. It was sponsored by 54 Senators: Senators Daniel, Kefauver, Mundt, Thurmond, Wiley, Dirksen, McClellan, Jenner, Ives, Anderson, Chavez, Murray, Mansfield, Sparkman, Stennis, Hill, Williams, Byrd, Butler, Walker, Knowland, George, Smith of New Jersey, Fulbright, Flanders, McCarthy, Kerr, Goldwater, Thye, Ervin, Curtis, Case of South Dakota, Schoeppe, Holland, Smathers, Barrett, Young, Hickenlooper, Capehart, Frear, Dworshak, Hruska, Cotton, Martin of Iowa, Bible, Potter, Beall, Scott, Allott, Bricker, Bennett, Robertson, Morse and Watkins.

The amendment would permit each State to adopt either the District Plan or the Proportional Plan. Under this Substitute Plan,

a State could distribute its electoral votes among the three top candidates according to their statewide popular vote; or, if the State Legislature preferred, the electors could be chosen as Senators and Representatives are now chosen--two by statewide vote and the rest by congressional districts.

After lengthy debate, the Senate amended S. J. Res. 31 by the Daniel Substitute by a vote of 48-37 (102 Cong. Rec. 5673, March 27, 1956). The vote was insufficient, however, to pass it as a constitutional amendment (two-thirds being necessary), and it was recommitted to the Senate Judiciary Committee (102 Cong. Rec. 5674).

85th Congress (1957-1958) - S. J. Res. 14, Sen. Smathers; H. R. 3503, Rep. Rains; H. J. Res. 8, Rep. Celler; H. J. Res. 112, Rep. Wright; H. J. Res. 130, Rep. Fisher; H. J. Res. 187, Rep. Herlong; H. J. Res. 188, Rep. Hiestand (the Combination Plan).

Action. These bills were referred to the appropriate committees but received no further action by Congress.

86th Congress (1959-1960) - S. J. Res. 4, Mr. Smathers; S. J. Res. 72, Mr. Kefauver; H. J. Res. 114, Mr. Fisher; H. J. Res. 127, Mr. Bennett of Florida; H. J. Res. 265, Mr. Kilgore; H. J. Res. 533, Mr. Smith of Mississippi; H. R. 2560, Rep. Rains; S. J. Res. 205, Mr. Byrd of West Virginia; S. J. Res. 86, Mr. Sparkman and others; S. J. Res. 219, Mr. Johnston of South Carolina; H. J. Res. 308,

Mr. Dowdy; H. R. 10301, Mr. Staggers; H. J. Res. 54, Rep. Hiestand (permitted States to select either the proportional or the district system).

87th Congress (1961-1962) - The following bills were introduced in the 87th Congress. In addition to referral to committee, the Senate Subcommittee on Constitutional Amendments held hearings, as noted, on the Senate bills proposing a proportional system and other Senate bills proposing changes in the existing electoral college system:

S. J. Res. 2, Sen. Johnston and others; H. J. Res. 122, Rep. Dingell; H. J. Res. 377, Rep. Berry; S. J. Res. 4, Senator Dodd; S. J. Res. 9, Sen. Smathers; S. J. Res. 17, Sen. Kefauver; S. J. Res. 28, Sen. Saltonstall; S. J. Res. 143, Sen. Kefauver and Sen. Dodd; H. J. Res. 46, Rep. Kilgore; H. J. Res. 106, Rep. Wright; H. J. Res. 116, Rep. Smith of Mississippi; H. J. Res. 165, Rep. Fisher; H. J. Res. 169, Rep. Herlong; S. J. Res. 48, Sen. Case of South Dakota; S. J. Res. 96, Sen. Ervin; H. J. Res. 25, Rep. Bennett of Florida; H. J. Res. 274, Rep. MacGregor; H. J. Res. 161, Rep. Hiestand (permitted States to select either proportional or district system).

88th Congress (1963-1964)

S. J. Res. 13, Senator Smathers; S. J. Res. 27, Senator Kefauver; H. R. 2617, Rep. Rains; H. J. Res. 32, Rep. Herlong;

H. J. Res. 73, Rep. Abernethy; H. J. Res. 95, Rep. Kilgore; H. J. Res. 132, Rep. Fisher; H. J. Res. 286, Rep. Dowdy; H. J. Res. 478, Rep. MacGregor.

Action

All measures were referred to the appropriate Committee.

89th Congress

S. J. Res. 7, Senators Sparkman and Saltonstall; S. J. Res. 28, Senator Smathers; S. J. Res. 138, Senators Sparkman, Ervin, Dodd and Saltonstall; S. J. Res. 139, Senator Holland; H. J. Res. 28, Rep. Abernethy; H. J. Res. 43, Rep. Davis of Wisconsin; H. J. Res. 60, Rep. Herlong; J. H. Res. 148, Rep. Wright; H. J. Res. 169, Rep. Fisher; H. J. Res. 184, Rep. MacGregor, H. J. Res. 842, Rep. Bennett.

Action

On February 28, March 1, 2, 7-10, 1966, the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary held hearings on the Senate Joint Resolutions and other proposed changes in the electoral system introduced in the 89th Congress. No measure was reported from the Committee.

90th Congress

S. J. Res. 3, Mr. Smathers -

Vests the executive power of the United States in the President and provides for a four year term.

Provides for the selection of political party nominees by a national primary. The places and manner of such primary are to be determined by the States. Congress determines the time of such primary, which must be uniform throughout the country. Voters in such primaries are to have the qualifications requisite for electors of the most numerous branch of their respective State's legislature, but such voters are eligible to vote only in the primary of his political registration. Candidates in such primaries must be registered members of the party in whose primary they are participating.

For purposes of this article a political party is recognized as such if at any time within 4 years prior to the election the number of registered members exceeded 10 percent of the total number of registered voters in the United States.

Within 15 days after the primary or at such time as Congress may direct the returns are transmitted to the President of the Senate where they are counted in the presence of the Senate and the House of Representatives.

Each political party in each State is given a number of electoral votes equal to the number of Senators and Representatives that State has in Congress. Such votes are divided among the candidates in proportion to the number of popular votes in the State that the candidates received. The person having the majority of

such votes of a party shall be that party's nominee. If no candidate receives a majority then a second primary is held between the two highest candidates.

In the event of the death or withdrawal of a nominee the national committee chooses a replacement with each State having one vote in such selection. A majority of States is necessary to make a choice.

Abolishes the electoral college. Provides for election of the President and the Vice President by the people. Voter qualification are those requisite to participate in the primary. The States establish the places and manner of holding the election. Congress determines the time of the election. Unless determined otherwise the election is held on the Tuesday next after the first Monday in November. Each State receives the same number of electoral votes that it did in the primary.

Within 45 days after the election, or at such time as Congress may direct, returns are transmitted to the President of the Senate. On January 6 following the election, unless Congress appoints a different day not earlier than January 4 or later than January 10, the votes are counted in the presence of the Senate and the House. Each person for whom votes were cast in each State is credited with such proportion of the electoral votes of that State as he received

of the total vote of the electors therein. In computing such totals fractions less than 1/1000th are disregarded. The person receiving the greatest shall be declared elected if his number of votes is at least 40 percent of the number of electoral votes. If no person receives at least 40 percent then the Senate and the House of Representatives sitting jointly shall choose immediately the President. A majority of votes is necessary to elect.

The Vice President is elected in a like manner.

Congress may provide for the case of the death of any person from whom they might have chosen the President or Vice President whenever the right of choice has devolved upon them.

S. J. Res. 7, Mr. Holland -

Vests the executive power in the President and provides for a four year term.

Gives each State a number of electoral votes equal to its Representation in the Congress. Such electoral votes are cast upon the basis of the elections in the States for President and Vice President. Voters in such State elections shall have the qualifications requisite for persons voting for members of the most numerous branch of the State legislature.

Congress determines the time of the election which must be uniform throughout the country. Unless otherwise determined

by Congress the election shall be held on the Tuesday next after the first Monday in November.

Each voter casts one ballot for both President and Vice President. Candidates must consent to the placing of their names on the ballot.

Within 45 days after the election or at such time as Congress shall direct, the returns shall be transmitted to the President of the Senate. On January 6, unless Congress appoints a different day not earlier than January 4 or later than January 10, the returns shall be opened and counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes of that State as he received of the total vote of the electors of that State. The Vice President's electoral vote is determined in the same manner.

The candidate receiving the greatest number of electoral votes shall be declared elected if such number be more than 40 percent of the total number of electoral votes. If no candidate receives the required 40 percent then, from the three candidates with the highest electoral vote, the Senate and the House of Representatives sitting in joint session shall immediately choose the President. A majority of the combined authorized membership of the Congress shall be necessary to elect.

If at the time of counting of the votes the presidential candidate who would have been elected by a majority shall have died then the vice presidential candidate who received the majority of the electoral votes shall be declared elected.

Congress may provide for the case of the death of any person from whom they may choose a President or a Vice President whenever the right of choice shall have devolved upon them, and for the case of death of both the presidential and vice presidential candidates who would have been elected but for their deaths.

S. J. Res. 84, Mr. Sparkman for himself, Mr. Dodd, and Mr. Ervin -

Similar to S. J. Res. 7, 90th Congress, but makes additional provision for participation in such election by the District of Columbia, it limits the District to no more electoral votes than the least populous State.

Provides that Congress may alter State regulations of such election and that if election by the Congress becomes necessary that such election shall be between the two candidates with the highest electoral vote.

H. J. Res. 9, Mr. Abernethy -

Similar to S. J. Res. 7, 90th Congress but sets no limitation on whom Congress may elect as President when the choice devolves upon them by virtue of no candidate receiving the required 40 percent of the electoral vote.

H. J. Res. 16, Mr. Bennett -

Provides for proportional system but requires a candidate to receive a majority of the electoral votes to be elected. Failing this, the House and Senate, sitting jointly, shall select the President from the two candidates having the highest number of electoral votes. A majority of the combined vote of both Houses would be necessary to election.

H. J. Res. 40, Mr. Davis of Wisconsin - Abolishes the electoral college system and provides for division of the electoral votes of each State and the District of Columbia in proportion to the popular votes received by such candidate. Grants each State a number of electoral votes equal to the total of its Senators and Representatives. Grants the District of Columbia the same number of electoral votes as the least populous State. The candidate having the greatest number of electoral votes for President shall be declared elected. In the event of a tie, the candidate for whom the greatest number of popular votes were cast shall be President.

H. J. Res. 97, Mr. Teague of Texas -

Similar to S. J. Res. 7, 90th Cong.

H. J. Res. 101, Mr. Teague -

Similar to H. J. Res. 9, 90th Congress.

H. J. Res. 157, Mr. Dowdy -

Similar to S. J. Res. 7, 90th Congress but makes additional provision for participation in such election by the District of Columbia limiting the District electoral vote to that of the least populous State.

H. J. Res. 255, Mr. Herlong -

Similar to H. J. Res. 9, 90th Congress.

H. J. Res. 347, Mr. de la Garza -

Similar to H. J. Res. 9, 90th Congress.

Action Hearings on the Senate joint resolutions were held by the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, on May 16, 17, July 12, 13, 14, 18, 19, 20, 25, and August 23, 1967. No measure was reported from the Committee.

91st Congress

S. J. Res. 2, Mr. Ervin for himself, Mr. Byrd of Virginia, Mr. Byrd of West Virginia, Mr. Dodd, Mr. Dominick, Mr. Jordan of North Carolina, Mr. Miller, Mr. Sparkman, and Mr. Talmadge.

Provides for the election of the President and the Vice President by the people of the States and the District of Columbia. Electors in the States must have the qualifications requisite for electors of the most numerous branch of the State legislature, but the State may provide for lesser residence requirements. Congress

is to prescribe the qualifications of the electors in the District, and also the places and manner of holding the election in the District. Congress also may alter or change State regulations relating to the election.

Unless otherwise determined by Congress the election shall be held on the Tuesday next after the first Monday in November. Each State is entitled to a number of electoral votes equal to its representation in Congress. The District shall be entitled to a number of votes to which it would be entitled if it were a State but not more than the least populous State.

Within 45 days after the election, or at such time as Congress may direct, the election returns shall be transmitted to the President of the Senate. On January 6 following the election, unless Congress appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the votes shall be opened and counted. Each person for whom votes were cast in the State or District shall receive, in proportion to the number of popular votes received, a portion of that State or District's electoral vote. In making such computation fractional numbers less than one one-thousandth shall be disregarded. The person receiving the greatest number of electoral votes shall be declared elected if such number is more than 40 percent of the total electoral vote. If no person has received 40 percent of the total or if two persons

receive the same total which is over 40 percent then the Senate and the House of Representatives sitting in joint session shall choose immediately from the two having the highest number of electoral votes. A majority is necessary to elect. The Vice President is elected in the same manner.

Congress may provide for the case of the death of any person from whom they may choose whenever the right of choice has devolved upon them.

S. J. Res. 4, Mr. Holland -

Similar to S. J. Res. 2 but makes additional provision in case of the death of a candidate that has been elected. Does not permit the lowering of a State's residence requirement and makes no provision for participation in the election by the District of Columbia.

S. J. Res. 33, Mr. Cannon -

Similar to S. J. Res. 2.

H. J. Res. 19, Mr. de la Garza -

Similar to S. J. Res. 2, but makes no provision for the case of the death of a candidate who would have been elected.

H. J. Res. 34, Mr. Fisher -

Similar to H. J. Res. 19.

H. J. Res. 107, Mr. Abernethy -

Similar to H. J. Res. 19.

H. J. Res. 192, Mr. Wright -

Similar to H. J. Res. 19.

H. J. Res. 194, Mr. Davis of Wisconsin -

Similar to S. J. Res. 2, but provides no dates for the counting of electoral and provides that the candidate receiving the greatest number of electoral votes be declared elected and that if there is a tie that the candidate with the highest popular vote shall be declared elected.

H. J. Res. 298, Mr. Dingell -

Similar to S. J. Res. 2, but requires that the candidates for President and Vice President consent to having their names joined on the ballot. Provides for a runoff election between the two highest pairs of candidates if no pair receives at least 40 percent of the electoral vote. The pair receiving the greatest popular vote in the runoff shall be declared elected. Provides Congress with the power to establish standards relating to the placing of candidates on the ballot and the places and manner of voting in such election and the method of determining the outcome.

Requires that Congress provide the means to assure that qualified citizens are allowed to vote. Makes provision for the case of a tie in the election and requires, for the purposes of this article that the States reapportion their districts every 5 years.

H. J. Res. 299, Mr. Biester -

Similar to S. J. Res. 2, but gives Congress power to provide for the places and manner such elections are to be held

in the States. Requires State electors to have the qualifications necessary to vote for United States Senator in that State. Requires candidates to consent to the joining of their names.

Congress may provide for the death or withdrawal of a candidate and for the case of a tie.

H. J. Res. 345, Mr. Horton -

Similar to H. J. Res. 298.

H. J. Res. 400, Mr. McCulloch -

Similar to S. J. Res. 2, but establishes no specific date for the holding of the election or the counting of the votes. Provides that Congress may establish these dates.

Provides for a runoff election if no pair of candidates receives at least 40 percent of the electoral vote. Such runoff to be between the two pairs of candidates that received the highest number of electoral votes. The pair receiving the greatest number of electoral votes in the runoff shall be declared elected.

Makes no provision for the case of the death or withdrawal of any candidate or president-elect.

H. J. Res. 419, Mr. Cleveland -

Similar to S. J. Res. 2, but requires State electors to have the qualifications necessary to vote for senator in that State. Candidates must consent to the joining of their names. Establishes no specific date for the counting of votes and provides for a runoff

between the two pairs of candidates that received the highest number of electoral votes in the event no pair receives at least 40 percent of the electoral vote. Empowers Congress to provide for the case of a tie.

H. J. Res. 697, Mr. Whitehurst -

Similar to S. J. Res. 2, but makes no provisions as to qualifications to vote in such elections. Rounds off percentages to the nearest hundredth. Provides that if no candidate receives the required 40 percent or there is a tie that Congress shall then choose from the top three candidates. Makes no provision for the case of the death of any candidates.

H. J. Res. 778, Mr. Poff -

Similar to S. J. Res. 2, but requires consent of the candidates to the joining of their names; provides that Congress may establish uniform residence requirements. Does not set any specific dates for the counting of ballots but requires in the event that no pair of candidates receives 40 percent of the total selection by the Congress between the two top pairs of candidates on or after January 3.

Action

The above bills were referred to the appropriate Committee, but none was reported out.

Arguments in Favor of Proportional Plan 36/

Those who favor the proportional plan, argue as follows:

1. Proportionate distribution of electoral votes would

tend to reflect more accurately the popular strength of the various

36/ Burns, James McG. The Electoral College meets, but why? New York Times Magazine (New York) December 12, 1948, p. 14, 74-8; Corwin, Edward S. The President: office and powers. History and analysis of practice and opinion. 3rd ed., revised. New York, New York University Press, 1948. p. 49-72; Kallenbach, Joseph E., Presidential Election Reform. Paper inserted in the Record by Sen. Henry Cabot Lodge, Jr. Congressional Record, April 13, 1949, 448-52; Lea, Clarence E. Modernize our Presidential election. Ten statements inserted in the Record by Rep. Lea, June 30-July 25, 1947. Congressional Record, July 8, 1947: A3412-13, July 16, 1947: A3545-7; Lippman, Walter, Electing a President. Series of 3 articles. Washington Post, March 6, 7, 9, 1950; Lodge, Henry Cabot, Jr. Should the United States abolish the Electoral College? Yes. The Rotarian (Chicago), v. 75, July 1949, 24-5, 52-3; U. S. Congress. House Committee on the Judiciary. Proposing an amendment to the Constitution of the United States providing for the election of President and Vice President. Washington, U. S. Govt. Print. Off., 1949 (81st Cong., 1st sess. House Report No. 1011); ---Senate, Committee on the Judiciary. Proposing an amendment to the Constitution of the United States providing for the election of President and Vice President. Washington, U. S. Govt. Print. Off., 1949 (81st Cong., 1st sess. Senate Report, No. 602); Wechsler, Herbert, The Lodge-Gossett plan. Fortune (Denver), June 1949, v. 39, 134-46; ---Presidential elections and the Constitution: a comment on proposed amendment. American Bar Association Journal (Chicago), March 1949, v. 35: 181-4, 270-4; Wilmerding, Lucius, Jr. Reform of the electoral system. Political Science Quarterly (New York), v. 64, March 1949, 1-23; et al. Congressional Digest, Apr. 1956, 106-121, for pro-con discussion. Senate Hearings, 1961, 1963, op. cit.; Senate Committee Print, 1961, op. cit.; Electoral College Reform, Chamber of Commerce of the United States, Sept., 1963; The Electoral College: Old Reforms Take on a New Look, Sen. Estes Kefauver, 27 Law and Contemporary Problems, 188, Spring, 1962; Why the Minority Voice in the Election of the President? Judge Joe Eaton, Florida, reprinted in Daily Congressional Record, May 21, 1964, pp. A2688-A2690; "The Direct Vote and the Electoral College," Saturday Review, February 12, 1967, p. 24.

candidates. It eliminates the "unit-rule" or "winner take all" system. As is argued by those who favor direct elections (see page 49, supra), when the party with a plurality of popular votes in a State wins all the electoral votes for that State, as is now the case, the final results usually exaggerate the strength of the winner. In 1912 Woodrow Wilson, with only 42 percent of the popular vote, received 84 percent of the electoral vote. In 1936 Franklin D. Roosevelt received 98 percent of the electoral vote on the basis of 60 percent of the popular vote. "Illusory" electoral strength provides a feeble basis for the exercise of power and may lead to abuse of authority. Distribution of electoral votes in accordance with popular vote would eliminate the distortion which results from allotment of State votes without regard for the relative popular strength of the parties contending.

Of all the proposals, the proportionate system comes closest to electing a President by popular vote of the people while at the same time preserving each State's relative electoral strength in the election of the President.

2. Under most circumstances, proportionate distribution would prevent the election of a candidate receiving a minority of the popular votes. As has been seen, the present system permits nominees with the greatest popular support to be defeated. With proportionate distribution of electoral votes, a candidate with a majority of popular votes could not lose the election because he won most of his electoral votes by large majorities while his opponent

received most of his electoral votes by bare majorities or pluralities. Had there been proportionate distribution in 1876 and 1888, Hayes would have been defeated by Tilden, and Harrison by Cleveland.

3. As far as the present unequal weighting of States permits, proportionate distribution would give equal weight to individual popular votes cast in pivotal States and in States where one party is almost certain to win by a wide margin. Under the present system a single voter in a "sure" State is not likely to affect the outcome of an election, while a few citizens in a doubtful State may hold the power to elect or defeat a candidate. This affects voting participation, which has tended to be higher in doubtful States. Proportionate distribution of electoral votes would give even a hopeless minority of voters in a State a chance of crediting their candidate with some electoral votes. It would reduce, although not eliminate, inequality of voting power.

Under the plan there is less possibility of the "disfranchisement" of voters since minority votes would be reflected in a proportional division of a State's electoral vote to the nearest one-thousandth.

4. Accidental circumstances and fraudulent voting or vote-counting would be less likely to defeat the choice of the people. As long as the shift of a few popular votes may determine which party wins the whole electoral vote of a State, accidents or frauds, it is said, constitute a disproportionate threat.

Close States may be won or lost on account of a rainy day or blizzard. With division of electoral votes according to voting strength, a small number of popular votes could affect no more than a few electoral votes. Swings due to accident, fraud or other similar causes would be reduced. Unless the electoral vote were exceedingly close, it is unlikely that any such extraneous circumstances would influence the outcome.

5. Through eliminating the position of Presidential elector, proportionate distribution would give the voters a more direct voice than they now have in the choice of the President. At present, no Federal law prevents an elector from violating the long-established custom that he should vote for the candidate nominated by his party. State laws requiring electors to follow instructions have been held unenforceable (e.g., Adcock, et al. v. Albritton, et al. [1948] and Folson, et al. v. Albritton, et al. [1948]).\* State legislatures may decide at any time that electors should be chosen, not by popular vote, but by some other means. Incapacity or disqualification may prevent electors chosen by the voters from functioning at the proper place on the proper day. The necessity for voting on individual electors instead of the actual Presidential candidates may confuse enough voters to affect the outcome of an election, especially in the States indicating only the electors' names on the ballot.

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\* --See footnote 12, page 56.

Abolition of the position of Presidential elector would give the people a direct role in the allocation of electoral votes. No complication could arise from the inability of electors to meet and vote as expected. Confusion created by long lists of electoral college candidates on Presidential ballots would be eliminated.

6. Proportionate distribution might strengthen the two-party system. First, it might invigorate the second party in States where the dominant party now is so strong that no other parties have any hope of victory. Under the present system, a party has little incentive to devote precious time, money and energy to local campaigning in States where the returns will almost surely be negative. With proportionate distribution, it is said, Republican party activity would probably be encouraged in the South, and Democratic activity in parts of New England and the Middle West.

Secondly, it would free the major parties from having to make any excessive concessions to minorities in key States, and allow them to concentrate on developing separate and distinct programs. The present system, it is argued, allows small minorities to hold the balance of power in pivotal States. Proportionate distribution would prevent pressure groups from bringing undue pressure on the major parties. Powerful minority groups would be deprived of any power they now possess to "throw" all the electoral votes of a pivotal State to whichever major party offers them the best terms.

It is not necessarily true that proportionate distribution would encourage the growth of numerous small parties and undermine the two-party system. By requiring the winning candidate to obtain an absolute majority of the electoral vote or majority of State delegations in the House of Representatives, the present system does militate against the rise of third or more parties. Voters generally prefer to cast their ballots for the party which has a chance of carrying the election. Under proportionate distribution, small parties could collect electoral votes without winning pluralities or majorities in the States, and a President could be elected by less than half of the electoral vote. However, as long as the winning candidate had to have more electoral votes than any other candidate, parties would not be likely to multiply rapidly. It is interesting that parties have not so multiplied in State, Congressional and other elections decided on the plurality system in the United States. The provision in the proposed amendment requiring election by at least 40 percent of the total electoral vote would help to check any tendency towards breakdown of the two-party system and would reduce the possibilities of the election being thrown into the Congress through the efforts of minor parties since it would require such a party to secure at least 20 percent of the electoral vote to do so. In addition, if an election were to be thrown into Congress, the choice would be limited to the two top candidates, not three, and would prevent a third party candidate from being considered.

7. Proportionate distribution might help to establish a more equitable balance of power among the States in Presidential elections. On the one hand, proportionate distribution of electoral votes would reduce the excessive importance of large, doubtful States in Presidential campaigns. Because of the stakes involved, parties now concentrate their pre-election activities in the so-called "pivotal" States. Under the proposed amendment the electoral votes of the present "key" States would not be "swung" one way or another by a small shift of popular votes. The parties would be encouraged to extend the scope of their campaigns in other parts of the country.

Proportionate distribution would also lessen the presently disproportionate value placed on Presidential (and Vice Presidential) candidates coming from the large, doubtful States. In the years 1900 to 1949, well over half the major party Presidential candidates were drawn from New York or Ohio.

At the same time, proportionate distribution, as proposed in S. J. Res. 3 (90th Congress), would eliminate the political injustice to large States of the present equal vote for all States in the House of Representatives. Under the present system, the House can elect a President supported by a minority of the people. In 1824, as already noted, the House chose John Quincy Adams over Andrew Jackson, despite Jackson's plurality of electoral votes. It is mathematically possible that 26 small States, with 89

Representatives, might outvote 24 large States, with 346 Representatives. Under S. J. Res. 3, elections would be referred to the House and Senate in joint session, with each Member and Senator entitled to one vote. The decision of such a body would undoubtedly reflect more accurately the wishes of the voters. By reducing the number of votes required for election by electoral votes from a majority to 40 percent, the proposed amendment would reduce to an acceptable minimum the chance that the choice would have to be referred to Congress.

Small and sparsely populated States would continue to enjoy the slight advantage now enjoyed through the distribution of electoral votes according to size of Congressional delegation. This preferential treatment probably has ceased to play an essential role in the preservation of Federal union. However, it is likely that the small States would object to losing their privilege and would block any amendment which would have that effect. The proportional amendment would not raise the issue.

8. Division of electoral votes in proportion to regular votes would not threaten the power of the States to regulate suffrage requirements. Whatever the virtues or disadvantages of leaving the control of voting qualifications to the States, there is reason to believe that no amendment opening the door to national control would be acceptable to the necessary two-thirds of the Congress and three-

fourths of the State legislatures. Proposals for proportionate distribution of electoral votes would not alter existing State authority to determine who may vote.

Arguments Against Proportional Plan <sup>37/</sup>

Those who oppose the proportional plan claim that:

1. Proportionate distribution might not strengthen the structure and powers of the nation's parties, and even could have an undesirable effect on them. It is generally agreed that the two-party system has helped to unify the United States and has enabled Presidents to provide necessary leadership in spite of a high degree of dependence on Congress. By allowing minority groups to win electoral votes, proportionate distribution would give minor parties

<sup>37/</sup> Becker, Carl. The will of the People. Yale review (New Haven) March 1945, v. 34: 385-404; Burns, op. cit.; Ferguson, Homer. Congressional Record, Feb. 1, 1950: 1062-9; Hermens, Ferdinand A. Flaws in new electoral plan. Washington Post, Jan. 20, 1950; Krock, Arthur, The proposed change in counting electors. The New York Times (New York), Feb. 3, 1950: 22; Lippmann, op. cit.; Patman, Wright. Should the States abolish the Electoral College? No. The Rotarian (Chicago), v. 75, July 1949: 24-5, 54-5; Silva, Ruth. Reform of the electoral system. Review of politics (Notre Dame), July 1952, v. 14: 394-407; Taft, Robert A. Congressional Record, Feb. 1, 1950: 1298-1299; U. S. Congress. House. op. cit.; Minority views by Clifford P. Case; Wechsler, The Lodge-Gossett plan, op. cit.; --Presidential elections and the Constitution, op. cit.; Wilmerding, op. cit. (1949); Electoral College Reform, Chamber of Commerce of the United States, Sept. 1963; A Report on the Method of Electing the President and Vice President. Committee on Federal Legislation, Assoc. of the Bar of the City of New York, Jan. 1962; Presidential Election Methods and Urban Ethnic Interests, Allan P. Sindler, 27 Law and Contemporary Problems 213, Spring, 1962; Senate Committee Print, 1961, op. cit.

more incentive to build up strength than they have under the present system. The provision requiring the winning candidate to receive at least 40 percent of the electoral vote would provide only a partial deterrent to the rise of new political groups. The splintering of political parties would be encouraged. The fact that the two-party system has generally survived in Congressional, gubernatorial, and other State and local elections does not prove that it would endure indefinitely in national elections. New parties would not have to win the Presidency in order to exercise political power; they could exert great influence by holding the balance of power.

Proportionate distribution might result in less activity by the major parties to unify diverse political groups. The existing electoral system gives the major parties an incentive to seek the votes of minority groups in key States. It helps to assure that the legitimate interests of these groups will be represented. As long as both major parties give recognition to the interests of minority groups, the members of such groups have little incentive to rally behind extremists and form special interest blocs or parties. The proportional plan, by reducing the political importance of minority groups in large, doubtful States, would make it possible for the major parties to give less attention to the interests of minor groups--whether economic, sectional, national, religious, or racial. While some of these minorities may now seem to command

more than their share of notice, it would be undesirable for national unity if any of these groups were to be systematically underrepresented.

2. Proportionate distribution would provide no assurance that the popular will would prevail in every Presidential election.  
The system of dividing electoral votes in proportion to popular vote, it is argued, would not equalize the value of popular votes in large and small States. The electoral vote, including the two votes for each Senator, would continue to be weighted in favor of the small States. A single vote in a small State, where the number of electoral votes relative to population was high, would have more influence than a single vote in a large State (in 1948 one electoral vote represented 160,862 popular votes in California, but only 17,821 votes in South Carolina).

Under some circumstances, the chances of a Presidential candidate's winning an election in spite of having a minority of the popular votes would be greater than they are under the present system. This might happen if one candidate received most of his electoral votes from States where the number of voters relative to electoral votes was low. Or it might happen where the vote in large States might be almost equally divided but one party had a greater number of small "safe" States than the other. In at least two elections since 1860, proportionate distribution would have given the Presidency to a minority candidate who was defeated under the present system. In 1880 Winfield S. Hancock had over 7,000 fewer votes than James A.

Garfield, but he would have won by a margin of 6 to 8 electoral votes if proportionate distribution had been in effect. In 1896, William Jennings Bryan won less than 47 percent of the popular vote to William McKinley's nearly 51 percent, but proportionate distribution would have given him an electoral vote margin of 6. Although Bryan carried only 17 States, 11 of them were in the South. McKinley carried 28 States in other sections of the country, but under the proportional system he would have lost many more electoral votes outside the South because of Democratic minority votes than he would have gained from Republican minority votes in the solidly Democratic South, and he would have lost the election.

It is argued also that reference of close elections to both Houses of Congress instead of the House of Representatives would not guarantee more accurate expression of the people's wishes. Under the present system, where a majority of State delegations in the House of Representatives is required for election, there can be deadlocks, and it has been suggested that one was only narrowly averted in the 1948 election. By specifying that a majority of the total membership of the House and Senate would be necessary for election, S. J. Res. 3 and similar bills still allow a third party or a faction of one major party to dictate the results of the election, if not to obstruct the decision altogether.

Proportionate distribution would not, as would a system of direct election involving some Federal control of the suffrage,

reduce the present inequality in voting qualifications in different States. In the counting of electoral votes, no penalty would be attached to low voting participation. The amendment might lead to increased variations and restrictions. State legislatures in "sure" States might seek to restrict voting by the minority in order to safeguard the power of the dominant party.

3. Some problems might be created by the abolition of Presidential electors. In the past electors have at times introduced a useful element of flexibility into the election process. In 1912, Theodore Roosevelt's electors could declare before the election that if Roosevelt could not win they would vote for Taft against Wilson. If electoral votes were retained purely for counting purposes, it would not be possible to make such commitments.

Abolition of electors, as provided in S. J. Res. 3, could possibly result in the election of President and Vice-President from separate parties. Now one set of electors is elected to choose both President and Vice-President. It is a practical impossibility for the two to belong to different parties. Under the proposed amendment, the States would be permitted to have separate ballots for President and Vice-President. The electoral votes for the chief executive and vice-president would be counted separately. To eliminate the chance of having winning candidates from different parties, it would be necessary for Congress or the Constitution to require joint balloting for the two officials.

4. Proportionate distribution might give undue political importance to areas having the least population relative to electoral votes. If the present system tends to overvalue the importance of the larger, doubtful States, it at least gives extra attention to the sections of this country where the size of the voting population relative to electoral votes is greatest. In reducing the importance of the large-electorate States, proportionate distribution might turn the emphasis excessively to small States where considerable numbers of electoral votes could be won by relatively few popular votes. The plan could well magnify the effect of unequal voter participation and place a premium on keeping the voter turnout low in one-party States. It would provide little incentive for those with low voting participation to broaden suffrage or relax restrictions on voting.

Adoption of the plan could well change the existing political balance in the electoral vote between the large populous States and others. Under the existing system the unit-rule advantage of the large States is balanced by the "three vote minimum" requirement which gives small States three electoral votes regardless of population, and by the "population basis" factor which awards electoral votes above the minimum of three on the basis of population without regard to the number of popular votes cast in the State. The proportional plan would upset this balance by eliminating the unit-rule advantage of the populous States while having no effect on the two

built-in factors which are advantageous to the least populous and low vote States, some of which are substantially one-party.

5. Under proportionate distribution, the States generally would have less importance as units in the election process. Now a State is "carried" by one party or another, and State political organizations may win power and prestige on the strength of having "delivered" a State to their Presidential candidate. It can be argued that this helps to maintain a desirable dispersion and decentralization of political power in the United States. With the electoral votes of the States divided percentage-wise between the various candidates, competing groups in the States would probably tend to be merged in national groups. State party organizations would be unable to claim credit for any more electoral votes than they could win by their share of the popular vote.

Proportionate distribution might cause campaigns to be organized too exclusively on a national basis. The present system encourages campaigning on a State-by-State basis. This has been only partly qualified by the increase in nation-wide discussion of issues on radio and television. Presidential campaigns are closely tied in with gubernatorial, Senate and other State campaigns. It can be argued that campaigns oriented around States may sometimes take issues to the people more effectively than campaigns directed toward the whole country.

6. The exaggeration of the winner's majority under the present system may not be an unmitigated evil. After a bitterly-fought election campaign, an appearance of nation-wide backing, counted by States, may help to win general acceptance for the victorious candidate. Under proportionate distribution the winner would almost never have more than a bare majority of electoral votes. In a substantial number of cases (and under the 40 percent requirement) he would probably have only a plurality.

7. An amendment providing for proportionate distribution might lead to the introduction of the direct election of the President or to Federal control over voting standards. It is not impossible that the amendment would prove an "opening wedge" for more drastic changes. Various supporters of the proportional plan have admitted that they would have favored direct election instead of proportionate distribution if they had believed that such an amendment would be acceptable to the necessary number of Congressmen and State legislatures. While either direct election or Federal control over voting qualifications might have certain advantages, there are important objections to both of them.

8. Proportionate distribution of electoral votes might conceivably lead to pressure for proportional representation in Congress. Now almost all Members of the House of Representatives are chosen in single-member districts, with a plurality of popular votes

required for election. This system discourages the growth of small parties, gives the major parties an incentive to absorb dissident groups, and makes the elected Representatives directly responsible to a geographically-delimited group of constituents. If the proposed amendment gave electoral votes to a small party which could not elect a Member to Congress, the small party might be encouraged to demand that State Congressional delegations be divided according to the number of popular votes received by various parties in the State. Proportional representation would permit the growth of small and perhaps immoderate parties. It would involve a shift from single to multiple member districts and a less direct relationship between member and constituent.

9. The Constitution, as the fundamental law of the United States government, should probably not be amended unless it is certain that the general welfare will benefit as a result. The present method of electing the President has been reasonably satisfactory. While proportionate distribution would eliminate some of the risks inherent in the existing system, it would introduce new dangers. In a close election where votes might be challenged and recounted, computations of proportions would be complicated and the result might hang in doubt for weeks. Any system which leaves the vote uncertain for the ordinary voter for any appreciable length of time could undermine public confidence in the

outcome. If the present method must be amended it would be best to devise a clearly desirable alternative.

Automatic System

The fourth approach would provide for the automatic operation of the existing electoral college system by amending the Constitution to retain the college but abolish the office of elector. This would abolish independent voting by Presidential electors and erase the problem of attempting to create binding systems. A candidate winning the highest number of popular votes in a State would automatically be credited with all the electoral votes from that State. A majority of the whole number of electoral college votes would, as now, be necessary for election to the Presidency and Vice-Presidency.

Voters in each State would cast a single ballot for President and Vice-President.

The proposal provides that in the absence of a receipt of a majority of electoral votes by a candidate for President, the selection shall be made by the Senate and the House meeting jointly with each member having one vote, from the three candidates with the highest electoral votes. The candidate of the three who receives the greatest number of votes in the Senate and House in joint session would be elected President.

This is known as the "minimal" proposal since it would effect the least change in the present system of electors and the

electoral college. It does, however, meet two of the major criticisms leveled at the present system. It eliminates the "independent" elector (and the possibility of individual States changing the method of appointing their electors), and it alters the method of selecting the President if an election is thrown into the Congress, the so-called "contingent election." Like the other proposals it eliminates election by the House of Representatives with each State having one vote.

It does preserve the unit-rule, however, and actually "freezes" it into the Constitution, changing it from a matter of custom to a constitutional mandate.

A proposal of this sort was first introduced by Representative Haynes of Georgia in 1826.

In recent Congresses various versions have been introduced differing primarily in provisions respecting the percentage of electoral votes necessary for election and in the method of selection of a President in the absence of an electoral vote majority.

In a message to Congress, dated January 28, 1965, President Johnson endorsed the adoption and ratification of a constitutional amendment reflecting this fourth type of approach (House Document 64, 89th Congress, 1st Session).

His message on reform of the electoral college system was as follows:

## REFORM OF THE ELECTORAL COLLEGE SYSTEM

We believe that the people should elect their President and Vice President. One of the earliest amendments to our Constitution was submitted and ratified in response to the unhappy experience of an electoral college stalemate which jeopardized this principle. Today there lurks in the electoral college system the ever-present possibility that electors may substitute their own will for the will of the people. I believe that possibility should be foreclosed.

Our present system of computing and awarding electoral votes by States is an essential counterpart of our Federal system and the provisions of our Constitution which recognize and maintain our Nation as a union of States. It supports the two-party system which has served our Nation well. I believe this system should be retained. But it is imperative that the electoral votes of a State be cast for those persons who receive the greatest number of votes for President and Vice President--and for no one else.

At the same time, I believe we should eliminate the omission in our present system which leaves the continuity of the offices of President and Vice President unprotected if the persons receiving a majority of the electoral votes for either or both of these offices should die after the election in November and before the inauguration of the President.

Electors are now legally free to choose the President without regard to the outcome of the election. I believe that if the President-elect dies under these circumstances, our laws should provide that the Vice-President-elect should become President when the new term begins. Conversely, if death should come to the Vice-President-elect during this interim, I believe the President-elect should, upon taking office, be required to follow the procedures otherwise prescribed for filling the unexpired term of the Vice President. If both should die or become unable to serve in this interim, I believe the Congress should be made responsible for providing the method of selecting officials for both positions. I am transmitting herewith a draft amendment to the Constitution to resolve these problems.

Favorable action by the Congress on the measures here recommended will, I believe, assure the orderly continuity in the Presidency that is imperative to the

success and stability of our system. Action on these measures now will allay future anxiety among our own people--and among the peoples of the world--in the event senseless tragedy or unforeseeable disability should strike again at either or both of the principal offices of our constitutional system. If we act now, without undue delay, we shall have moved closer to achieving perfection of the great constitutional document on which the strength and success of our system have rested for nearly two centuries.

LYNDON B. JOHNSON

THE WHITE HOUSE, January 28, 1965.

On January 20, 1966, President Johnson sent a further message to Congress on the proposal (Daily Congressional Record, January 20, 1966, pp. 656-657):

#### REFORM OF THE ELECTORAL COLLEGE SYSTEM

In my special message to the Congress last January, I urged an amendment to the Constitution to reform the electoral college system. I renew this recommendation and strongly reaffirm the need to reform the electoral college system.

There are several major defects in the existing system. They should be eliminated in order to assure that the people's will shall not be frustrated in the choice of their President and Vice President.

First, there presently exists the possibility that the constitutional independence of unpledged electors will be exploited, and that their votes will be manipulated in a close presidential race to block the election of a major candidate in order to throw the election into the House of Representatives. This grave risk should be removed.

Second, if the election is thrown into the House of Representatives, the existing system suffers from other fundamental defects. In such an election, the House of Representatives would be empowered to elect

a President from the three highest candidates. However, each State casts only one vote, with the result that the least populous States have the same vote in the election of the President as the most populous States.

As early as 1823, Madison reached the conclusion that--

The present rule of voting for President by the House of Representatives is so great a departure from the republican principle of numerical equality, and even from the Federal rule, which qualifies the numerical by a State equality, and is so pregnant also with a mischievous tendency in practice, that an amendment to the Constitution on this point is justly called for by all its considerate and best friends.

I firmly believe that we should put an end to this undemocratic procedure.

Third, if the electoral vote is indecisive under the existing system, the President is elected by the House of Representatives, but the Vice President is elected by the Senate. This creates the possibility of the election of a President and a Vice President from different parties. That possibility should not exist. To prevent its realization, the President and the Vice President should both be elected by the same body.

Fourth, the 23d amendment makes no provision for participation by the District of Columbia in an election of the President by the House of Representatives, or of the Vice President by the Senate.

I firmly believe that we should extend to the District of Columbia all the rights of participation in the election of a President and Vice President which the 50 States may exercise.

Fifth, existing law fails to provide for the death of the President-elect or Vice-President-elect between election day and the counting of the electoral votes in December. There is also no provision in the Constitution to cover the contingency presented by the death of a candidate for President or Vice President shortly before the popular election in November. These gaps should now be filled.

Elimination of these defects in our Constitution are long overdue. Our concepts of self-government and sound government require it.

Congress can now, in the words of Daniel Webster, "perform something worthy to be remembered," by uprooting the more objectionable features in the system of electing a President and Vice President, and thereby helping to preserve representative government and the two-party system.

LYNDON B. JOHNSON

THE WHITE HOUSE, January 20, 1966.

Bills incorporating the President's original proposals were introduced in the Senate by Senator Bayh (S. J. Res. 58, 89th Cong.) and in the House by Representative Celler (H. J. Res. 278, 89th Cong.).

Some proposals in recent Congresses incorporating the same general approach have been:

80th Congress

H. J. Res. 106, Rep. Kefauver.

85th Congress

S. J. Res. 132, Sen. Kennedy (Mass.).

87th Congress

S. J. Res. 26, Sen. McGee;  
S. J. Res. 113, Sen. Kefauver;  
S. J. Res. 114, Sen. Case (New Jersey).

88th Congress

S. J. Res. 8, Sen. McGee;  
S. J. Res. 24, Sen. Kefauver;  
H. J. Res. 71, Rep. Zablocki.

89th Congress

S. J. Res. 11, Sen. McGee -

Grants each State a total of electoral votes equal to the number of its Senators and Representatives. Gives all the electoral votes of each respective State to the candidates for President and Vice President who receive the greatest number of popular votes therein. Provides that voters shall vote for candidates for President and Vice President on the same party ticket. Splits the electoral votes of a State equally, in the event of a tie in the popular vote between two candidates if their respective votes are greater than any other candidate.

In the event that no candidate receives a majority of the aggregate nation-wide electoral vote, the choice shall be made by the House of Representatives from the three candidates having the highest number of electoral votes. Vote in the House is by States with each State having one vote; a majority of the States being necessary for election.

Leaves to the States the determination of the qualifications of voters in presidential elections but authorizes Congress to alter the manner of holding such elections.

S. J. Res. 58, Sen. Bayh -

Grants each State a total of electoral votes equal to the number of its Senators and Representatives. Gives all the electoral

votes in each State to the candidates for President and Vice President who receive the greatest number of popular votes in such State. Provides that voters in each State shall vote for President and Vice President on one ballot.

Provides that the names of candidates shall be placed on the ballot in each State only with the consent of such persons.

In the event that no candidate for President receives a majority of the aggregate, nation-wide electoral votes, the selection shall be made from the three candidates having the highest number of electoral votes, by the Senate and House meeting jointly. The candidate of the three receiving the greatest number of votes in such joint meeting shall be elected.

Provides that if at the time of congressional counting of the electoral votes the candidate for President who had received a majority had died, the Vice Presidential candidate would become President. Congress is authorized to provide for the case of the death of both the Presidential and Vice Presidential candidates who might have been entitled to the offices.

The determination of qualifications for voting in such an election would be left to the States.

A similar bill, H. J. Res. 278, was introduced by Representative Celler.

H. J. Res. 111, Rep. Zablocki -

Grants to each State a total of electoral votes equal to the number of its Senators and Representatives. Provides that voters in each State shall vote on separate ballots for President and Vice President; that the candidate for President in each State receiving the greatest number of popular votes shall receive all of that State's electoral votes, and separately that the Vice Presidential candidate receiving the greatest number of popular votes in a State shall receive all that State's electoral votes.

The person having the greatest number of aggregate, nation-wide electoral votes for President and the person having the greatest number of aggregate, nation-wide electoral votes for Vice President shall be elected to the respective offices.

H. J. Res. 327, Rep. Bandstra -

Substantially similar to S. J. Res. 58 (above), but with provision for the District of Columbia, and with a provision that a plurality of the aggregate electoral votes would be sufficient for election to the Presidency and Vice Presidency. Provides that in the event of a tie in total electoral votes, the choice shall be made between the two candidates by the Senate and House meeting jointly, a plurality being necessary for election.

Note: Of the "automatic" proposals introduced in the 89th Congress, only H. J. Res. 327, explicitly mentions the District of Columbia. Some argue that it is not necessary to mention it

expressly in the proposed amendment because the Twenty-third Amendment provides that the District is to have the same number of electors to which it would be entitled if it were a State, but in no event more than the least populous State. If the Twenty-third Amendment were not changed, however, there might be some doubt about the status of the District if electors were abolished because that Amendment provides that the District shall appoint "electors". Also, still left uncertain is the power of Congress to provide for presidential elections in the District. These points perhaps should be considered in the debate on the proposal or in a committee report.

H. J. Res. 819, Rep. Bandstra -

Similar to his H. J. Res. 327, but with the following additions:

Provides that States may prescribe lesser residence requirements for voting in Presidential elections;

Provides that States may regulate the places and manner of holding such elections, but that Congress may alter such regulations.

Action. On February 28, March 1, 2, 7-10, 1966, the Senate Subcommittee on Constitutional Amendments of the Committee on the Judiciary held hearings on these and other proposals. No measure was reported from the Committee.

Modifications in the Automatic Proposal as Embodied in S. J. Res. 58 and H. J. Res. 278. Suggested major modifications in

S. J. Res. 58 were proposed at the hearings by the Department of Justice (from statement by Attorney General Nicholas deB. Katzenbach, prepared for delivery at the hearings, March 8, 1966) as follows:

(a) Incorporate and supersede the provisions of the 23rd Amendment providing for the participation of the District of Columbia in Presidential elections. Provide that in the event selection of the President is thrown into Congress three votes be automatically cast for the District in such voting by awarding to the person for whom the electoral votes of the District was cast, three such votes on behalf of the District.

(b) Clarify the requirement for ticket voting to insure that a voter votes for candidates for both President and Vice President on one ticket.

(c) Give Congress general power to enforce the article by appropriate legislation and, in particular, make the places and manner of holding Presidential elections subject to regulation by Congress.

(d) Eliminate the prohibition against a State's electoral votes being cast for Presidential and Vice Presidential candidates both of whom are inhabitants of that State.

(e) Authorize Congress to provide for the case of a death of a candidate shortly before the election, that is, by postponing the election for a sufficient period to permit a new candidate to be nominated. At present, should a party Presidential candidate die

shortly before or after the November election, the parties by convention or through their national committees may select another party candidate and ask that the Electors elected on the party ticket at the November election vote for such party candidate in December. Abolition of the Electors means that in the event a party candidate dies shortly before the November election, insufficient time would remain for parties to nominate another candidate and get his name on ballots in all States for the only election that would take place were S. J. Res. 58 ratified, that is, the November election.

Other suggested major modifications in S. J. Res. 58 were proposed by the Committee on Federal Legislation of the Association of the Bar of the City of New York. These were set forth in Reports of Committees of the Association of the Bar Concerned with Federal Legislation, Vol. 4, Bull. No. 3, July 1965, pp. 121 et seq., as follows:

(a) Clarification of the relationship of the 23rd Amendment on electing Electors by the District of Columbia to S. J. Res. 58 and appropriate modification thereof.

(b) Permit States to reduce residence requirement for Presidential elections.

(c) Eliminate the three-fourths quorum requirement in a joint meeting of the Senate and House to select a President if the vote required is a majority from such joint bodies rather than a plurality as proposed in S. J. Res. 58.

(d) Provide for selection in such a situation from among the three highest ranking candidates in electoral votes, or a greater number in the event of ties involving more than three candidates.

(e) In order to preserve continuity of party tickets for President and Vice President in such a situation, provide that the President and Vice President be voted for on a joint ballot by Congress, but only as the candidates have consented to stand together.

(f) Provide for Congress to enact a law for postponement of the election in the event a candidate dies on or shortly before election day, or some other remedy.

90th Congress.

H. J. Res. 469, Rep. Celler - Similar to S. J. Res. 58, of the 89th Congress.

S. J. Res. 21, Senator McGee - similar to S. J. Res. 11, of the 89th Congress.

H. J. Res. 109, Rep. Zablocki - similar to H. J. Res. 111, of the 89th Congress.

H. J. Res. 1086, Rep. Bingham, H. J. Res. 1251, Rep. Hathaway -

Provide for election of the President and Vice President by automatically awarding from each State and the District of Columbia the entire electoral vote from such State and the District to the candidates for President and the candidate for Vice President who

receive the greatest popular vote therein. The office of individual presidential elector is abolished, but each State retains the number of electoral votes for President and Vice President equal to the whole number of Senators and Representatives to which that State may be entitled in the Congress. The District of Columbia shall have a number of electoral votes at least equal to the least populous State. The places and manner of holding such election in each State shall be prescribed by the legislature thereof, but Congress may at any time prescribe the places and manner of electing the President and Vice President.

The person having the greatest number of electoral votes for President shall be President if such number be a majority of the whole number of electoral votes. The Vice President shall be similarly elected. In the absence of a majority of the electoral votes for a candidate, a runoff election shall be held between the two persons having the greatest number of electoral votes for President or Vice President as the case may be. A majority of the electoral votes shall be necessary for election in the runoff election.

Congress may provide by law for the determination of any case affecting the election of the President or Vice President for which provision is not made by the Amendment.

H. J. Res. 1353, Rep. Reuss -

Provides for the automatic receipt in each State and the District of Columbia by the two persons joined by consent as candidates

for President and Vice President and who receive the greatest popular vote therein, of all the electoral votes of such State or the District. The election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the term of the President is to begin, unless otherwise determined by Congress. The legislature of each State shall determine the place and manner of holding such election therein, but Congress may make or alter such regulations. Voter qualifications in each State shall be the same as for persons voting for Members of Congress, but States may adopt a less restrictive residence requirement for voting for President and Vice President, and Congress may adopt uniform residence and age requirements for voting in such elections.

Qualifications for voting and the places and manner of holding such an election in the District of Columbia shall be prescribed by Congress.

Within 15 days after the election, or at such time as Congress may direct, certified returns of the results of the election in each State and the District of Columbia shall be sent to the President of the Senate. On December 1, unless Congress shall by law appoint a different day not later than December 5, the President of the Senate, in the presence of the Senate and the House, shall open the votes, and the votes shall be totalled. A plurality of at least 40 percent of the whole number of electoral votes is necessary for the election of a President and Vice President who are joined as a pair of candidates. In the absence of attaining

such a percentage by a pair of candidates, a runoff election shall be held between the two pairs of candidates having the highest number of electoral votes. In a runoff, the pair of candidates receiving the greatest popular vote in any State shall receive all the electoral votes of that State.

If at the time fixed for counting the electoral votes the Presidential candidate entitled to the office shall have died, the Vice Presidential candidate entitled to election as Vice President shall be declared elected President. If both candidates shall have died, an entirely new election for President and Vice President shall be held.

Congress may provide for the death or withdrawal, prior to a presidential election of a candidate for President or for Vice President, and for the death or withdrawal of any of the persons who are candidates in a runoff election.

Action. The Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary held hearings on most of the Senate joint resolutions on May 16, 17, July 12, 13, 14, 18, 19, 20, 25, and August 23, 1967. No measure was reported from the Committee to the Senate.

91st Congress.

S. J. Res. 191, Mr. Ervin -

Provides that on the Tuesday next after the first Monday in November of the year before the beginning of the next presidential term, unless Congress appoints a different day, that an election shall be held in each State and the District of Columbia for President and Vice President. Voters cast a single ballot for President and Vice President. The candidates must have consented to the joining of their names. The voters in each State must have the qualifications necessary to vote for members of the most numerous branch of the State legislature. The places and manner of holding such election are determined by the States but Congress may alter such regulations. The Congress establishes voter qualifications for the District of Columbia.

Provides that the persons receiving the greatest number of votes for President and Vice President in a State shall receive a number of electoral votes equal to that State's number of Senators and Representatives in Congress. The candidates receiving the greatest number of votes in the District receives the electoral votes to which the District would be entitled if it were a State but not more than the number of electoral votes of the least populous State.

Requires that within 45 days after the election or at such time as Congress may direct that the election returns shall be transmitted to the President of the Senate to be counted.

On January 6 following the election, unless Congress appoints a different day not earlier than January 4 or later than January 10, the returns are opened and counted in the presence of the Senate and the House of Representatives. The pair of candidates receiving the greatest number of electoral votes shall be declared elected if such number be more than a majority of votes cast. If no pair receives a majority, then the Congress, sitting in joint session, immediately elects such officers. A quorum for such purposes consists of three fourths of the members of the Senate and the House of Representatives. In the election each member has one vote and there is cast for the candidate that received the greatest number of votes in the District of Columbia a number of votes equal to the District's electoral vote. In such election, the candidate that receives the greatest number of votes is elected.

Provides that if at the time for counting the votes that the person who would have won has died that his vice presidential candidate shall be declared elected President, that Congress may provide for the case of the death of any persons for whom they might have selected a President or Vice President when the right of choice devolves upon them, that Congress may provide for the case of the death of both persons who would have been entitled to become President and Vice President, and for the

case of the death or withdrawal prior to the election of any candidate.

Gives Congress power to enforce by appropriate legislation. (Incorporates changes in earlier automatic plans suggested by Attorney General Katzenbach in 1966; see, Senator Ervin's remarks in Daily Congressional Record, April 7, 1970 at 55176).

H. J. Res. 1, Mr. Boggs, for himself, Mr. Sikes, Mr. Matsunaga, and Mr. Wolff.

Vests the executive power in the President and provides for a four year term.

Provides that the President and the Vice President are to be elected by the people of each State in such manner as their legislature shall direct and that Congress prescribes for such election in the District of Columbia. Requires that the day of such election shall be uniform. Votes in such election are to be for a presidential candidacy composed of presidential and vice presidential candidates joined on one ballot. Candidates must have consented to the joining of their names, and no candidate may join his name with more than one such other.

The election returns are to be transmitted to the President of the Senate. Each State is granted a number of electoral votes equal to its representation in the Congress. The District of Columbia is to be granted electoral votes as

if it were a State but no more than the number of votes given to the least populous State. The presidential candidacy that receives the greatest number of votes shall receive the electoral votes of that State or District. If no candidacy receives at least 40 percent of the electoral vote a runoff election shall be held in such manner as Congress may direct between the two candidacies that received the highest number of electoral votes. In such runoff the candidacy that receives the greatest number of electoral votes shall be declared elected.

Requires Congress to provide procedures for the case of the death or withdrawal of a candidate on or before the election, or in case of a tie.

H. J. Res. 6, Mr. Bingham -

Similar to H. J. Res. 1086, 90th Congress.

H. J. Res. 181, Mr. Celler -

Similar to H. J. Res. 469, 90th Congress.

H. J. Res. 188, Mr. Reuss -

Vests the executive power in the President and provides for a 4 year term.

Provides that each State shall receive a number of electoral votes equal to its representation in the Congress. Requires that each voter cast a single ballot for the offices of President and Vice President and that such candidates shall have consented to the

joining of their names. Gives the State's electoral votes to the candidates that received the greatest number of popular votes.

Provides that Congress determine the time of such election which time, unless Congress determines otherwise, shall be the Tuesday next after the first Monday in November.

States are to determine the place and manner of holding such election and must include on their ballots the names of all who have consented to the joining of their names for the offices of President and Vice President. Congress may alter such regulations.

Voters in such elections must have the qualifications necessary to vote for members of Congress, but States may adopt less restrictive residence requirements and Congress may adopt uniform residence and age requirements.

Congress prescribes the qualifications for voting and the places and manner of holding such election in the District of Columbia.

Provides that within 15 days after the election or at such time as Congress may determine the election returns shall be transmitted to the President of the Senate. On December 1, unless Congress appoints a different day not later than December 5, that the returns shall be counted and that the candidates that receive the highest number of electoral votes be declared elected unless

the plurality received is less than 40 percent. If no pair of candidates receives at least 40 percent of the electoral vote then a runoff election is held between the two pairs of persons that received the highest number of electoral votes. The winner shall be that pair that receives the greatest number of electoral votes in the runoff election.

Provides that if, at the time of counting the votes, that the person who would have been entitled to election as President shall have died, that the vice presidential candidate of such candidate shall be declared elected. If both such candidates shall have died at such time, then a new election is to be held.

Empowers Congress to provide for the case of the death or withdrawal of a candidate prior to the election, and for the case of the death or withdrawal of any candidates in the runoff election.

Provides Congress with the power to enforce by appropriate legislation.

H. J. Res. 189, Mr. Stratton -

Similar to H. J. Res. 1, 91st Congress.

H. J. Res. 256, Mr. Corman -

Similar to H. J. Res. 469, 90th Congress.

H. J. Res. 346, Mr. Kleppe -

Vests the executive power in the President.

Provides for an election to be held in the States and the District of Columbia to determine who will receive the States' and District's electoral votes. Such election is to be held on a day to be determined by Congress which must be uniform throughout the country. Congress is to determine the time, place, and manner in which the results of such election are to be ascertained. The laws of the States are to govern the conduct of such election but Congress shall have the power to alter such regulations. Congress provides for the places and the manner in which such election is held in the District of Columbia.

Voter qualifications in the States are those necessary for an elector of the Senators of a State, except that the State may provide for a less restrictive residence requirement. Congress prescribes the voter qualifications in the District.

In an election held under this article voters cast a joint vote for both President and Vice President which candidates must have consented to the joining of their names.

Each State receives a number of electoral votes equal to its representation in the Congress. The District receives electoral votes equal to its representation in the Congress. The District receives electoral votes as if it were a State but no more than the

least populous State. The candidacy receiving the greatest number of popular votes in a State receives the electoral vote of that State and the candidacy that receives a majority of the electoral vote shall be declared elected. If no candidacy receives a majority of electoral votes then the candidacy that receives the greatest number of popular votes shall be declared elected.

Provides that Congress shall legislate regarding procedures to be followed in the event of the death or withdrawal of a candidate on or before the day of election or in the event of a tie.

H. J. Res. 362, Mr. Eshleman.-

Similar to H. J. Res. 1086, 90th Congress.

H. J. Res. 644, Mr. Coughlin -

Similar to H. J. Res. 1406, 90th Congress but Congress determines how candidates appear on the ballot, the places at which and the manner in which the election is held, and the manner in which the outcome is determined.

Provides that voter qualifications in the States are those necessary to vote for Senator in that State except that the States may provide for less restrictive residence requirements. Congress provides for voter qualifications in the District.

As an alternative to the above manner of selection of a President and Vice President provides for the election of the President by direct popular vote.

H. J. Res. 822, Mr. Hutchinson -

Similar to H. J. Res. 346, 91st Congress but provides that voters in the State have the qualifications necessary to vote for the most numerous branch of the State legislature and that States may waive residence requirements for participating in such election.

Further provides that if no pair of candidates receives a majority of the electoral votes which is necessary to elect them the pair of candidates that received the greatest number of popular votes shall be declared elected if such number is more than 40 percent of the total vote. If no pair receives such 40 percent, then the Congress acting as a national assembly shall select a President and Vice President with each Senator and each Representative having one vote.

H. J. Res. 825, Mr. Hutchinson -

Similar to H. J. Res. 822, 91st Congress but limits selection of Congress in the event no candidate receives the required majority to the two candidates receiving the highest number of electoral votes.

H. J. Res. 890, Mr. Clay -

Similar to H. J. Res. 469, 90th Congress.

Action. All the above bills were referred to the appropriate Committee but as of May 1, 1970 none have been reported.

38/

Arguments in Favor of the Automatic Plan

1. The Automatic Plan requires the least change in the present constitutional system. The present system undoubtedly has its flaws but the presence of some flaws is no reason for replacing an entire system which by and large has served the nation well through many changes from a small agrarian nation to an industrial giant. It would be somewhat presumptuous to alter such a system with an entirely new and wholly untried system which could

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38/ For comments see: House Doc. 64, 89th Cong., p. 4. The Message of President Johnson on the proposal; Senate Judiciary Committee hearings, op. cit., 87th Congress, 1961, Part 2, pp. 364, et seq., statement by the then Ass't Attorney General Katzenbach; Senate Judiciary Committee, Committee Print, op. cit., 87th Congress, 1961; A Report on the Method of Electing the President and Vice President, by the Committee on Federal Legislation, Association of the Bar of the City of New York, 1962 (endorsing the proposal); Electoral College Reform, Chamber of Commerce of the United States, Sept., 1963; The Electoral College: Old Reforms Take on a New Look, Sen. Estes Kefauver, 27 Law and Contemporary Problems, 188, at pp. 207-212; Wilmerding, op. cit., pp. 169-212; Remarks by Sen. Kennedy (Mass.), 102 Cong. Rec. 5159, 5235, March 21, 1956, Sen. Payne, 102 Cong. Rec. 5654-5656, March 27, 1956, Sen. Allott, 102 Cong. Rec. 5660-5662, March 27, 1956; Remarks by Rep. Bandstra, Daily Cong. Rec., Feb. 17, 1965, pp. 2857-2859; J. Hampden Dougherty, The Electoral System of the United States, 1906, Chap. XI; Association of Bar of the City of New York, Report of Committee on Federal Legislation. Proposed Constitutional Amendment Abolishing Electoral College and Making Other Changes in Election of President and Vice President, Vol. 4, Bull. 3, July, 1965, p. 121; Leave the College Alone. Gerald W. Johnson. The New Republic, Vol. 144, Jan. 9, 1961: 22; The Virginia Commission on Constitutional Government, "Reform the Electoral College, No," May, 1966; Bickel, Alexander M., "The Case for the Electoral College," New Republic, January 28, 1967, pp. 15-16; Bickel, Alexander M., "Is Electoral Reform the Answer?," Commentary, December 1968, pp. 41-51, Vol. 46, No. 6; Kristol, Irving and Weaver, Paul, "A Bad Idea whose Time has Come," New York Times Magazine, November 23, 1969, pp. 43, 146-157.

cause untold damage in the highly complex and really little understood political system we have today.

2. The Automatic Plan embodies changes which alleviate the flaws most readily apparent in the present system while preserving that portion of the system which has served so well for so long. Admitting that the system needs some change, the automatic system has the advantage of abolishing the office of elector but at the same time preserving the electoral vote system of electing the President which over the many changing conditions that this nation has survived has really fallen short only one time in the Hayes-Tilden controversy.

3. By giving each Member of Congress a vote in the event of the election going over into Congress the automatic system provides for a quick democratic method of resolving close election disputes.

The runoff system of selecting a President in close elections is fraught with peril in the forms of fraud, third party maneuvering, lack of certainty and wear and tear on candidates, but with the election going to a joint session of Congress immediately after it has been determined that no candidate received a majority of electoral votes cast the election is decided with the utmost dispatch. When an election is this close it is probably more important to decide the issue quickly than anything else.

4. The Automatic Plan would eliminate the possibility of the "faithless elector" while preserving the electoral vote system of electing the President.

One of the primary complaints against the present system is the possibility of the elector that refuses to vote the same as his state did. The debate surrounding the counting of the vote of an elector from North Carolina for George Wallace when that State gave a plurality of its vote to Richard Nixon illustrates the necessity for resolving the problem of the independently minded elector. Adoption of the Automatic Plan would solve this dilemma by automatically giving the State's electoral vote to the candidate that carried it, thereby bypassing the now archaic office of elector.

5. In preserving the present electoral vote system of electing the President, the Automatic Plan would, in effect, be preserving our federal system of government. Our federal system of government has served us long and well through many eras of various vicissitudes. To discard it in the area of presidential elections for an untried and untested system would be taking the most foolish sort of risk, a risk that need not be taken. The cry of "one man, one vote" should not be allowed to rush us into making basic changes in our form of government. Simple majoritarianism has never reigned supreme in this the most democratic

of nations. Often it takes two-thirds or even three-fourths to accomplish the will of the majority in our form of government. Are these to be overcome also? The federal system is a clear recognition of the multitude of factors that must be taken into consideration when one considers how to govern one of the world's largest nations. Each State has received special consideration by virtue of simply being a State (i.e., two senators and at least three votes in the electoral college). This fact has helped preserve the integrity of the State governments and the viability of our country.

6. The Automatic Plan by providing for election by the Members of the House and the Senate with each Member having one vote when no candidate receives the required number of electoral votes, allows greater freedom in voting than the present system of limiting each State to either one vote or none in the event of disagreement. Another admitted flaw in the present system is that of limiting each State to one vote in the event that the election is thrown into the House. Adoption of the automatic plan with provision for election by the Senate and the House with each member having one vote in the event no candidate receives the required number of electoral votes makes such an election much more democratic, while at the same time, it preserves the federal aspect of such election. This would obviate the need for a runoff election

that would be required by most direct election plans with all of its inherent flaws and weaknesses.

7. Enactment of the Automatic Plan would preserve the two party system which has lent so much stability to our nation.  
Our present two party system is a direct outgrowth of the present system of electing the President. It is a result of adaptation to that system, a very democratic result, a compromise. Early in our history our leaders discovered that under the system that they had developed two parties were all that could manage to survive and still maintain any sort of effectiveness. Thus compromise became the modus operandi of our government and it has served us well to this day. Any severe or radical change in our method of selecting our President must, of necessity, change the political arena in which such selection takes place. Probably the first institution to suffer then will be the two party system, a system which though highly workable enjoys no constitutional sanctions but rather is a result of the Constitution and the manner in which it operates in practice.

8. Adoption of the Automatic Plan would not necessarily necessitate wholesale changes in State election laws or a massive intervention in such area by the federal government as would some other proposed changes. The automatic system would preserve another

aspect of the federal system, that of State control of the electoral process within limits established by the Constitution. Though at times much maligned, State control over the election process is not without its virtues. As Justice Brandeis said in his dissent in New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1939), "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." Federal control over all aspects of elections can lead to a monolithic stagnant process of conducting elections. A process that recognizes no standard other than its own and consequently is unamenable to change.

9. The Automatic Plan would preserve the present composition of the President's constituency. The present combination of circumstances and electoral vote result in the President representing a different constituency than does either the House or the Senate. This different constituency is composed largely of bloc voters and interest groups in the so-called "swing" States where a large number of electoral votes is available and there is generally a fairly close vote. Such constituency, heretofore underrepresented, has an increasingly strong voice in governmental affairs due to the reapportionment of States and their various elected officials, but still they rely heavily on the President to bring their case before the nation.

10. Adoption of the Automatic Plan would, even in close elections, continue to give the appearance of a mandate to the elected candidate. Adoption of the Automatic Plan would place in the Constitution the present general practice of States voting by unit rule, a practice in which when a candidate receives a plurality of a State's popular vote he receives all of the electoral vote. Two of the last three presidential elections have been extremely close in popular vote. Yet when the electoral votes were counted the winning candidate had at least the appearance of a popular mandate. Though it may be a mandate in appearance only, it does lend some semblance of popularity to the incoming administration, at least more than a 100,000 vote plurality would.

#### Arguments Against the Automatic Plan

1. The Automatic Plan does not achieve reform in depth and adoption of it as a constitutional amendment would forever stifle any further attempts to achieve reform in this area. The reforms proposed by the Automatic Plan are both too little and too late. Preservation of the outmoded electoral vote system though coupled with abolition of the office of elector is not nearly sufficient to cure the many injustices inherent in the use of the electoral vote system. Now when there is sufficient impetus to achieve lasting and meaningful reform is not the time to settle only for lasting reform.

2. The Automatic Plan freezes into the Constitution the unit rule which is used presently to eliminate effectively all votes cast for a losing candidate in a State. The unit rule is one of the more archaic injustices in our election law. By giving to the winner of a plurality in a State all of the electoral votes of a State the votes of all those who did not support the winner in the State are cancelled out and have no force and effect in the election in the nation as a whole.

3. Preservation of the electoral vote system continues the possibility of electing a minority President. Inherent in the present system of electing the President and the proposed Automatic Plan is the distinct possibility of electing a President who has received fewer votes than his opponent. The "winner-take-all" aspect of the unit rule of the Automatic Plan has given us minority Presidents in the past and may very well do so again in the future.

4. The Automatic Plan distorts the electorate in that it tips the scales in favor of the large urban areas. The unit rule has traditionally encouraged concentration on the States with large populations as a source of party candidates because of the large electoral vote of these States. It further gives a disproportionate amount of influence to homogeneous groups within these largely heterogenous large States.

5. The Automatic Plan works against political activity in those States considered "safe" by the political parties. Because many voters consider their votes lost when they vote for a party that is known to consistently tally less than a majority or plurality in a State these voters do not bother to go to the polls at all and the democratic process suffers because of this loss. Additionally, those who are members of the majority party also suffer from this ennui brought about by a stagnant political situation.

6. The Automatic Plan would give a false impression as to the actual vote return by use of the unit rule. The unit rule deceives the public as to the actual results of an election. By giving the impression of a false mandate the public is deceived and it would be far better to have the public aware of the very narrow margins by which some presidential elections are won.

7. Participation in presidential elections by citizens of the smaller States is discouraged by the Automatic Plan because they are aware that their votes will only influence a small number of electoral votes. Citizens of small States cannot help but be aware that no matter how strenuous their efforts may be on the part of a candidate that they can only influence a relatively small number of electoral votes and this same feeling of disenchantment must of necessity be reflected in the potential voters' participation in the actual election.

8. The Automatic Plan would retain the present outmoded and inequitable system distribution of electoral votes by giving each State a minimum number of such votes. One of the more undemocratic aspects of our present system of electing a President is that of giving each State at least three (3) electoral votes no matter how small its population is a definite relic of times past and today serves only to disfranchise other citizens.

Contingent Election of the President and Vice President.

Several proposals were introduced in the 90th Congress and one in the 91st Congress to amend the Constitution to change the procedure for voting in the House for President and in the Senate for Vice President, should such a duty devolve upon the respective House.

H. J. Res. 1112, Rep. Hutchinson; H. J. Res. 1153, Rep. McClory, H. J. Res. 1164, Rep. Chamberlain -

Provides that when the right to choose the President devolves upon the House pursuant to the 12th Amendment, the choice shall be made by the House the term of which commences in the same calendar year as the presidential term to be filled. A quorum shall be a majority of the House and the person receiving the greater number of votes in the House shall be elected. The choice shall be made between the two persons receiving the highest number of electoral votes.

When the Senate is to choose a Vice President, the selection shall be made by the Senate held in that Congress whose term of office commences in the same calendar year as the vice presidential term to be filled. A quorum shall be a majority of the whole number of Senators, and the person receiving the greater number of votes in the Senate shall be elected.

H. J. Res. 1281, Rep. Joelson -

Amends Amendment 12 to provide that when the right of choice of the President shall devolve upon the House, each Representative shall have one vote. A quorum shall consist of a majority of the whole number of Representatives, and a majority of the votes cast shall be necessary to a choice.

91st Congress

S.J. Res. 18, Senator Yarborough. Similar to H. J. Res. 1281, 90th Congress but provides that a quorum shall consist of two thirds of the whole number of Representatives.

Action: The Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary held hearings on most of the Senate joint resolutions on May 16, 17, July 12, 13, 14, 18, 19, 20, 25, and August 23, 1967. No measure was reported from the Committee to the Senate.

Popular Interest in Reform

In the fall of 1948 a public opinion poll conducted by the American Institute of Public Opinion showed that 58 percent of the American public favored changing the method of electing the President so that each candidate would receive the same proportion of the electoral vote of each State that he receives in the popular vote. Only 15 percent favored maintaining the present system, while 27 percent had no opinion. <sup>39/</sup> In 1950 a Gallup Poll showed that 57 percent of the American people wanted the Lodge-Gossett amendment while only 22 percent opposed it (the remainder having no opinion). In April of 1960, Gallup's American Institute of Public Opinion released a report showing that 50 percent of the American people favored a change in the electoral college system, 28 percent opposed a change, and 22 percent expressed no opinion. <sup>40/</sup>

A Gallup poll report of May 18, 1966, disclosed that 63 percent of those polled approved of direct election of the President by popular vote, while 20 percent disapproved and 17 percent had

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39/ National Municipal Review (New York), October 1948, v. 37: 511-12

40/ Washington Post, March 5, 1950: Washington Post, Nov. 15, 1960: B3.

no opinion (see, Congressional Quarterly, Week of May 20, 1966, p. 1042).

Replies from approximately 2,500 of some 8,000 state legislators in the country to a poll conducted by Senator Burdick of North Dakota, in the summer of 1966, revealed that:

58.8 percent favored direct, popular election of the President,

21.2 percent favored the proportional plan,

10.2 percent favored the district plan, and

9.7 percent favored the continuation of the present system.

In the Christian Science Monitor, of May 24, 1967, Mr. Roscoe Drummond, in a column entitled, "Choosing the President," stated that the Gallup organization reported that the American public has approved reform of the electoral college system on 14 different occasions going back to 1936.

The Washington Post, of November 23, 1967, reported that in a recent Gallup poll, 65 percent of the persons asked declared that they approved of direct election of the President; 22 percent expressed disapproval, and 13 percent expressed no opinion.

A poll taken among 766 political scientists by the Senate Subcommittee on Constitutional Amendments pursuant to its hearings in 1961, during the 87th Congress, received 254 completed answers. These revealed the following: 41/

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41/ Senate Judiciary Committee, Subcommittee on Constitutional Amendments, Committee Print, 87th Congress, 1961, op. cit.

90.6 percent favored a change in the method of electing the President;

71.7 percent favored the abolition of the office of elector; 24.4 percent were opposed;

60.7 percent favored retaining the present electoral strengths of the States; 33.4 percent were opposed;

34.2 percent favored direct national election; 63 percent were opposed;

46.9 percent favored a proportional system; 48.8 percent were opposed;

16.2 percent favored a district system; 78.3 percent were opposed;

2 percent favored some plan other than those mentioned (Note, the "automatic" proposal was not suggested in a question). 74.3 percent did not favor some other plan than those mentioned;

55.9 percent favored a change in the system of contingent election by the House of Representatives; 37.8 percent opposed a change;

51.2 percent favored contingent election by a joint meeting of the Senate and House with each Member having one vote. 27.2 percent were opposed; 21.6 percent left the question unanswered.

More recently a Gallup Poll conducted before and after the 1968 presidential election produced the following results: "Would you approve or disapprove of an amendment to the Constitution which would do away with the Electoral College and base the election of a President on the total vote cast throughout the nation?"

	Post Election	Preelection
Approve	81%	66%
Disapprove	12%	19%
No opinion	7%	15%

Polls conducted by Members of Congress among their constituents produced the following results:

April 15, 1969. Poll conducted by Representative Hamilton of the 9th Congressional District of Indiana. (Daily Congressional Record E2939)

Would you approve of a constitutional amendment which would substitute popular election of the President and Vice President for the present Electoral College.

Yes..... 80%  
No..... 19.9%

April 15, 1969. Poll conducted by Representative Gilbert 22nd Congressional District of New York. (Daily Congressional Record E 2962)

Would you approve of a Constitutional amendment which would substitute Popular Election of the Presidency for the present Electoral College?

Yes..... 77%  
No..... 11%  
Undecided.... 12%

April 17, 1969. Poll conducted by Representative Chamberlain of the 6th Congressional District of Michigan. (Daily Congressional Record E 3065)

10. The Electoral College should be:	Yes	No	No Response
(a) Continued as is	9%	26%	65%
(b) Changed to divide a State's electoral vote in proportion to the popular vote	21%	13%	66%
(c) Changed so that if no candidate wins enough electoral votes, a runoff rather than Congress, would decide the winner	15%	14%	71%
(d) Abolished, with President elected by popular vote	65%	7%	28%

April 22, 1969. Poll conducted by Representative Whalen of the 3rd District of Ohio. (Daily Congressional Record E 3230)

5. Should the electoral college be abolished and the President elected solely by the direct vote of the people?

Yes..... 79  
No..... 16  
Undecided.... 5

April 24, 1969. Poll conducted by Representative Corbett, 18th Congressional District, Pennsylvania. (Daily Congressional Record E 3350)

8. What method of electing the President would you like to see?

(a) An Electoral College composed of one elector from each Congressional District and two at large from the State?	9%
(b) Direct popular vote.	77%
(c) No change; keep present system.	14%

May 6, 1969. Poll conducted by Representative Broomfield, 10th Congressional District of Michigan. (Daily Congressional Record E 3673)

Would you favor replacing the electoral college placing greater emphasis on the direct popular vote in electing the President?

Adults -	Yes.....	90.65
	No.....	7.51
Students -	Yes.....	87
	No.....	14

May 12, 1969. Poll conducted by Representative Smith of New York, 40th Congressional District. (Daily Congressional Record E 3827)

7. Should the Electoral College be abolished and the President be chosen by direct popular vote?

Yes.....	85
No.....	13
No response.....	2

June 4, 1969. Poll conducted by Representative Marsh, 7th Congressional District of Virginia. (Daily Congressional Record E 4629)

8. In electing the President of the United States do you favor:

Retention of present electoral college system.	9.3
Election by direct national popular vote.	62.6
Modifying electoral college to divide each State's electoral votes in proportion to majority or plurality received by each presidential candidate in each State and Congressional District.	25.9

June 12, 1969. Poll conducted by Representative Reid, 15th Congressional District of Illinois. (Daily Congressional Record E 4871)

3. Would you favor changing the electoral college system in order to place greater emphasis on the popular vote in electing the President and Vice President?

Yes.....	83%
No.....	15%
No opinion.....	2%

June 19, 1969. Poll conducted by Representative Burke, 10th District of Florida. (Daily Congressional Record E 5101)

9. Do you feel the electoral college should be abolished and the President and Vice President be elected solely by the simple majority of the people?

Yes.....	87.8%
No.....	12.2%

July 10, 1969. Representative Latta, 5th Congressional District of Ohio. (Daily Congressional Record E 5796)

6. Do you favor the abolition of the electoral college and the election of the President and Vice President by popular vote?

Yes.....	45%
No.....	15%

July 24, 1969. Representative Johnson, 23rd Congressional District of Pennsylvania. (Daily Congressional Record E 6266)

5. The method of electing a President after nomination:

Retain present system	6%
Direct popular vote	77%
Allocate the electoral votes in each state in proportion to the popular vote cast, making a 40% electoral vote plurality sufficient to choose a President	6%

Count one electoral vote for the winner  
 in each Congressional District, with two  
 conditional votes for whomever carries  
 the vote

9%

July 28, 1969. Representative Wyatt, 1st Congressional District of  
 Oregon. (Daily Congressional Record E 6319)

17. Electoral college reform is being advocated.  
 Which of the following choices do you prefer? (Please check  
 one only):

- a. Abolish the electoral college system  
 and provide for the direct popular election  
 of the President. 76.4%
- b. Provide for the election of presidential  
 electors by districts within each state  
 rather than the present "winner-take-all"  
 system of State at-large election. 5.2%
- c. Provide for the proportional division of each  
 State's electoral votes among the various  
 presidential candidates in accord with the  
 share of the popular vote each receives in  
 the State. 9.5%
- d. No change in present system. 5.1%
- e. No opinion. 3.8%

July 30, 1969. Representative Eshleman, 16th Congressional District of  
 Pennsylvania. (Daily Congressional Record E 6455)

19. In the area of electoral reform, do you favor a plan which  
 would provide for the direct election of a President.

Yes.....	74%
No.....	20%
No response.....	6%

July 30, 1969. Representative Ashbrook. 17th Congressional District of Ohio. (Daily Congressional Record H 6587)

3. In which of the following ways would you prefer to have your vote for President and Vice President counted.

- a. Proportional plan -- under which the electoral vote in each state would be distributed in proportion to the popular vote in each State. 7.6%
- b. District plan under which electors would be chosen by District in the same manner as Representatives and Senators. 6.4%
- c. Direct plan under which electoral college would be abolished and the President and Vice President would be elected directly. 73.9%
- d. No change -- favor present system with electoral college apportioned primarily according to population. 9.3%
- e. No opinion. 2.8%

July 31, 1969. Representative Dellenback, 4th Congressional District of Oregon. (Daily Congressional Record E 6535)

Do you favor:

- 1. The direct popular election of the President and Vice President?

Yes.....	85.1%
No.....	9.5%
No opinion.....	5.6%

August 4, 1969. Representative Pettis, 33rd Congressional District of California. (Daily Congressional Record E 6607)

4. Electoral college - Do you favor:

- a. Abolish it and elect the president by a direct popular vote?

Yes.....	69%
No.....	10%
Undecided.....	21%

b. Apportion the electoral votes of each state on the basis of the candidates votes in that state?

Yes.....	18%
No.....	24%
Undecided.....	58%

c. Award electoral votes by Congressional district?

Yes.....	10%
No.....	27%
Undecided.....	63%

August 5, 1969. Poll conducted by Representative Ruppe, 11th Congressional District of Michigan. (Daily Congressional Record E 6657)

Should the electoral college be abolished and the President and Vice President elected by popular vote?

Yes.....	75%
No.....	13%
Undecided.....	12%

September 10, 1969. Representative Symington, 2nd Congressional District of Missouri. (Daily Congressional Record E 7330)

4. There have been several proposals for changing the present electoral college system. Which do you prefer?

Direct election of the President	66.7%
Abolish the electoral college by retaining the electoral vote, which would be cast automatically for the winning candidate in each State	9.2%
Abolish the electoral college. Apportion each State's electoral votes among candidate, based on their popular vote either statewide or by Congressional District.	15.6%
Retain the present system	5.5%
No response	3. %

September 11, 1969. Representative Duncan, 2nd Congressional District of Tennessee. (Daily Congressional Record E 7384)

10. Do you want to abolish the Electoral College and elect the President and Vice President by direct popular vote?

Yes.....	68.1%
No.....	27.7%
No opinion.....	4.2%

September 19, 1969. Representative Rees, 26th Congressional District of California. (Daily Congressional Record E 7683)

5. The Electoral College - Should the election of a president by means of the Electoral College be replaced by a national popular vote for president.

Yes.....	46.6%
No.....	20.5%

October 15, 1969. Representative Preyer, 6th District of North Carolina. (Daily Congressional Record E 8463)

Election of President -

Favor direct election	75%
Favor present electoral college	14%
Favor electoral college by district	7%
Undecided or no answer	4%

October 16, 1969. Representative Bow, 16th Congressional District of Ohio. (Daily Congressional Record E 8562)

Do you favor the bill soon to be debated in the House to abolish the electoral college and choose our President by direct popular vote.

Yes.....	84.9%
No.....	15.1%

October 23, 1969. Representative Pepper, 11th District of Florida. (Daily Congressional Record E 8795)

Electoral reform

5. Preferred method for electing President

	<u>His %</u>	<u>Hers %</u>
a. Direct popular vote	70	70
b. Use State electoral vote with modification	16	15
c. Continue present system	10	9
d. No response	4	6
6. a. If (a) selected should minimum be established	50	48
b. If (b) selected apportion electoral vote among candidates in relation to number of popular votes received.	11	11
c. Assignment of electoral vote in congressional districts by presidential plurality and 2 "at-large" electoral votes determined by total presidential vote in State.	7	6
d. No response.	32	35

October 27, 1969. Representative Eilberg, 4th Congressional District of Pennsylvania. (Daily Congressional Record E 8961)

6. (a) In view of the closeness of November's Presidential election, do you think we should change the way we elect our President?

Yes.....	79%
No.....	13%
Undecided.....	3%
No response.....	5%

(b) Are you in favor of my proposal to abolish the electoral college and substitute direct popular election of the President?

Yes.....	77%
No.....	12%
Undecided.....	5%
No response.....	6%

October 30, 1969. Representative Fish, 28th Congressional District of New York. (Daily Congressional Record E 9181)

11. A proposed Constitutional amendment to change how we choose our President and Vice President before Congress.

Do you prefer

	<u>His %</u>	<u>Her %</u>
a. Direct popular vote?	58.2	59.0
b. No change from present electoral college reform?	7.2	6.7
c. A system based on allocating each state's electoral votes in proportion to the state's popular vote?	9.2	8.5
d. A district system where each candidate would receive one electoral college vote for each congressional district be carried and two for each state be carried?	4.9	4.5
e. No opinion.	2.0	3.2
f. No response.	18.5	18.1

November 12, 1969. Representative Mikva, 2nd Congressional District of Illinois. (Daily Congressional Record E 9524)

13. Electoral College: I favor

Retaining the Electoral College as it is. 10%

Abolishing the Electoral College and electing the President and Vice President by direct popular vote. 77%

Abolishing the Electoral College but having the vote in each State on the basis of Congressional Districts. 9%

Did not reply. 4%

November 17, 1969. Representative Corbett, 18th Congressional District of Pennsylvania. (Daily Congressional Record E 9657)

6. Would you vote for a constitutional amendment to provide for the direct popular election of our President?

Yes.....	86%
No.....	14%

November 17, 1969. Representative Hall of the 7th Congressional District of Missouri. (Daily Congressional Record H 10964)

5. Should the electoral college be abolished and the President elected by a direct vote of the people?

Yes.....	88%
No.....	9%
Undecided.....	3%
No answer.....	0

Breakdown by Age Group

	18 to 24	25 to 41	45 to 64	65 plus
Yes.....	86%	88%	87%	87%
No.....	14%	9%	9%	9%
Undecided.....	0	3%	4%	3%
No answer.....	0	0	0	1%

December 19, 1969. Poll conducted by Representative Moss, 3rd Congressional District of California. (Daily Congressional Record)

5. Which of the following do you support?

a. Retaining the electoral college as it is	3.7%
b. Elect the President and Vice President by direct popular vote of the people	79.6%
c. Revising the Electoral College voting to reflect proportioned strength actually won by a candidate in each state	16.7%

January 22, 1970. Poll conducted by Representative Pelly, 1st Congressional District of Washington. (Daily Congressional Record E 243)

Should we elect the President by direct vote?

Yes.....	81%
No.....	13%
Undecided.....	5%

On August 8, 1969, Senator Robert P. Griffin inserted in the Congressional Record the results of a poll he had taken among several state legislatures. The following is Senator Griffin's letter to the legislator, a copy of his questionnaire and the results of the poll.

U.S. SENATE,  
July 9, 1969.

DEAR LEGISLATOR: Recently the Judiciary Committee of the U.S. House of Representatives approved H.J. Res. 681 which proposes a Constitutional amendment abolishing the electoral college and the electoral vote, and provides for election of the President by direct popular nationwide vote.

To those of us in Congress who soon will vote on this measure, it is important to determine, if possible, whether such a proposal stands a chance of being ratified by the legislatures of  $\frac{3}{4}$  of the states. Obviously, if the direct popular vote amendment cannot win ratification by a sufficient number of states, Congress should focus its attention on one of the other electoral reform proposals.

It would be very helpful to me and my colleagues if you would take a moment to answer the few questions on the attached sheet and return it in the enclosed stamped, addressed envelope. As long as we know your state, it is not necessary for our survey purposes to have your name.

Your cooperation in making this survey as complete and accurate as possible is very much appreciated.

Sincerely,

ROBERT P. GRIFFIN,  
U.S. Senator.

SAMPLE COPY ELECTORAL REFORM  
QUESTIONNAIRE

Member of Legislature, State of—:

1. Would you, as a state legislator, vote to ratify a proposed Constitutional amendment abolishing the electoral vote and providing for election of the President by direct popular nationwide vote?  Yes.  No.

2. Do you believe your state legislature would approve such a proposal?  Yes.  No.

3. If the direct popular election proposal should fail, would you favor an alternative which would abolish the electoral college but retain the electoral vote of each state, and which would:

(a) apportion the state's electoral vote on the basis of the popular vote within the state?  Yes.  No. or

(b) award 1 vote for each congressional district on the basis of the popular vote within that district, with 2 additional electoral votes awarded according to the statewide popular vote?  Yes.  No.

(Daily Congressional Record, August 8, 1969, S 9453)

**RESULTS OF ELECTION REFORM QUESTIONNAIRE**  
(In percent)

State	Legis- lators respond- ing	Direct election				If direct election fails, legislators would favor					
		Individual support <sup>1</sup>		Predicts legislative approval <sup>1</sup>		Proportional plan			District plan		
		Yes	No	Yes	No	Yes	No	Unde- cided	Yes	No	Unde- cided
Alabama.....	32	60	40	49	45	62	27	11	33	31	36
Alaska.....	43	69	31	57	23	35	50	15	30	55	15
Arkansas.....	52	75	23	59	34	61	12	27	50	23	27
Delaware.....	41	63	37	50	42	66	17	17	25	12	63
Georgia.....	44	56	39	41	50	49	29	22	54	24	22
Hawaii.....	34	92	8	92	8	69	12	19	38	19	43
Idaho.....	50	47	53	27	70	38	30	32	66	21	13
Louisiana.....	25	79	15	67	22	56	16	28	62	8	30
Maine.....	43	63	37	52	42	43	29	28	54	26	20
Maryland.....	48	70	30	51	35	62	24	14	36	34	30
Mississippi.....	53	59	40	47	47	55	35	10	38	30	32
Montana.....	63	65	34	57	32	53	36	11	42	28	30
New Hampshire.....	41	69	31	48	41	62	20	18	37	27	36
New Mexico.....	42	70	30	67	31	50	26	24	39	43	18
Nevada.....	50	73	27	67	30	83	7	10	14	43	43
North Carolina.....	36	58	42	30	60	53	27	20	65	28	7
North Dakota.....	51	37	60	20	72	44	31	25	46	29	25
Oklahoma.....	29	53	47	35	47	47	24	29	50	21	29
Oregon.....	52	66	32	54	36	42	37	21	52	29	19
Rhode Island.....	37	81	19	78	13	71	16	13	33	38	29
South Carolina.....	47	62	35	51	43	58	28	14	43	34	23
South Dakota.....	55	66	34	50	45	42	30	28	52	20	28
Texas.....	43	60	38	53	40	63	23	14	44	25	31
Utah.....	40	69	29	64	31	67	20	13	28	33	39
Vermont.....	52	77	23	62	30	59	25	16	34	34	32
Virginia.....	54	55	43	39	50	61	32	7	44	35	21
Wyoming.....	54	55	43	37	55	53	32	15	27	47	26
Total.....		44	64	34	50	41	55	26	19	43	29
											28

<sup>1</sup> Where total of those responding to direct election questions does not equal 100 percent, the difference represents those legislators who were undecided

(Daily Congressional Record, August 8, 1969, S 9453)

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